REPUBLIC OF LIBERIA

EUROPEAN UNION

FOURTH AUDIT REPORT

VOLUME 2: REMINDERS ARCHIVES FROM AUDITS 1 TO 3

Efficiency of the FLEGT licensing scheme and effectiveness of the Legality Assurance System assessed through the services of an Independent Auditor

Service contract N° 2016/382-141
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R2004

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ACRONYMS AND ABBREVIATIONS

Date format: Except where otherwise specified, all abbreviated dates in this report shall have, and be understood as having the following format “dd.mm.yyyy” (for day, month, and year).

A1R	Audit 1 report
A2R	Audit 2 report
A3R	Audit 3 report
A4R	Audit 4 report
B/L	Bill of Lading
BOT	Build, Operate and Transfer
C&Rs	Conclusions and recommendations
CAR	Corrective action request
CFD	Commercial Forestry Department
CFHP	Code of Forest Harvesting Practices
CFMA	Community Forest Management Agreement
Ch./Chap.	Chapter
COC	Chain of Custody
COCIS	Chain-of-Custody Information System
COCS	Chain-of-Custody System
CSOs	Civil Society Organizations
CyFD	Community Forestry Department
DBH	Diameter (measured) at Breast Height

DCL	Diameter Cutting Limit
DFID	(UK) Department for International Development
DMDO	Deputy Managing Director of Operations
DSA	Daily Subsistence Allowance (a.k.a. *per diem*)
EFI	European Forest Institute, FLEGT Facility
EP	Export permit
EPA	Environmental Protection Agency
ESP	External Service Provider
EU	European Union
EUD	European Union Delegation
EUTR	EU Timber Regulation
FDA	Forestry Development Authority
FLEGT	Forest Law Enforcement Governance and Trade
FMAC	Forest Management Advisory Committee
FMC	Forest Management Contract
FMPGs	Forest Management Planning Guidelines
FoIA	Freedom of Information Act 2010
FP	Forward Planner
FSC	Forest Stewardship Council
GoL	Government of Liberia
IA	Independent Auditor
IAWG	Independent Audit Working Group (JIC's WG on the Independent Audit)
IR	Inception report
IT	Information Technology
JIC	Joint Implementation Committee
KE1	Key expert 1
LAS	Legality Assurance System
LED	Law Enforcement Division
LEITI	Liberia Extractive Industries Transparency Initiatives
LFSP	Liberia Forest Sector Project
LIC	Liberian Implementation Committee
LLD	Liberia Licensing Department
LM	Legality matrix
LRA	Liberian Revenue Authority

LVD	Legality Verification Department
MACs	Ministries, Agencies and Commissions
MOF / MFDP	Ministry of Finance / Ministry of Finance & Development Planning
MOJ	Ministry of Justice
MOL	Ministry of Labor
MoU	Memorandum of Understanding
MS	Microsoft
NAD	National Authorizing Division
NAO	National Authorizing Office
NBSTB	National Benefit Sharing Trust Board
NC	Non-conformity
NFRL	National Forest Reform Law
NKE1	Non-key expert 1
NMSMC	National Multi-Stakeholder Monitoring Committee
O&M	Organization and Methodology
PAD	Public Affairs Division
PUP	Private Use Permit
QMS	Quality Management System
SFMP	Strategic Forest Management Plan
SGS	Société Générale de Surveillance
SoA	Schedule of Activities
SOP	Standard Operating Procedure
SSH	Short-shipped
TBC	To be confirmed / To be continued
TL	Team leader
ToR	Terms of reference
TSC	Timber Sale Contract
UK	United Kingdom
VPA	Voluntary Partnership Agreement
VPASU	VPA Support Unit

1 BACKGROUND FROM PREVIOUS AUDITS 1 TO 3

1.1 Introduction to this Audit 4 report, Volume 2

This is the Volume 2 of the '**Preliminary audit report'** that concludes the fourth audit ("Audit 4") completed by SOFRECO, the appointed **Independent auditor** (IA) **of the timber Legality Assurance System (LAS)** that is being implemented in Liberia under the EU-Liberia FLEGT Voluntary Partnership Agreement (VPA), reporting to the Joint Implementation Committee (JIC) of the VPA.

As agreed with the JIC's Working Group on the IA (IAWG), the Audit 4 report (A4R) would be split in **two separate volumes** (new Audit 4 findings and updates in the Volume 1, vs. background material and useful archives from the previous audits compiled in this Volume 2). Because of the many cross-references, both volumes keep more or less the same thematic structure.

This Volume 2 of the Audit 4 report (A4R, Vol.2) should therefore mostly be used in combination with the main Volume 1 (A4R, Vol.1) for reference, for reminders of reviews already completed in previous Audit 1 to 3 reports of the IA, and not updated during the Audit 4, or only slightly updated or followed-up on during the Audit 4 but without significant changes to previous Conclusions & Recommendations (C&Rs).

This was rendered necessary because each new audit follows on from the previous one, all audit reports are standalone reports, with most relevant material references carried over from the previous reports to the new report, and the report was becoming too thick as it kept growing with additions from each new audit.

This Volume 2 also includes some of the 'Review of corrective actions implemented by GoL' (as per IAWG Final Matrix, classified by Main C&R in the Audit 3 report), where follow-up during Audit 4 did not significantly affect the IA's findings and C&Rs.

There are **different ways to navigate through this Volume 2**, from useful references, and to find increasing levels of detail about a particular topic or issue:

- From the Table of contents, go to the Main Conclusions & Recommendations (Chapter 3);
- From the Main C&Rs, use the references to relevant detailed sections in the report (Vol.1/Vol.2). References to related 'Risks & Issues' registered by the IA are also provided;
- Or, from the Table of contents in Vol.1, go to Chap. 7.2 and see all the issues and risks raised by the IA in a single table (**'**Risks & Issues tracking' Database), which also provides references to the related sections back into the reports;
- Chap. 7.1 in the Vol.2 provides a listing of the relevant VPA requirements being systematically reviewed. The IA keeps the details of the review for internal use.

The structure of this Volume 2 of the Audit 4 report now therefore includes:

- In Chap.1 (BACKGROUND FROM PREVIOUS AUDITS), this 'Introduction' (1.1) followed by a 'Reminder of Audit 1 to 3 focus and results' (1.2);
- In Chap. 2, the 'CONTRACTUAL FRAMEWORK FOR THIS AUDIT';
- In Chap.3, the IA's 'MAIN CONCLUSIONS AND RECOMMENDATIONS' (C&Rs) to the JIC, carried out from the Audit 3 without significant changes;
- In Chap. 4, details about 'AUDIT PREPARATION';
- As part of Chap.5 ('AUDIT IMPLEMENTATION'), the 'Baseline review of VPA requirements' (5.1), the 'Follow-up on previously reported issues' (5.2), and the 'Review of the current issuance of Export permits' (5.4);
- In Chap.6, the 'AUDIT EVIDENCE & FINDINGS' relative to on-going reviews that were followed-up on from previously reported issues, during this audit but without significant changes;
- In Chap. 7, the archive of all 'PREVIOUS REVIEWS COMPLETED' already in previous reports of the IA, and not significantly revised during the Audit 4;
- In Chap. 8, finally, an 'APPENDIX' that contains the bulk of ANNEXES i.e. supplementary information to the report.

1.2 Reminder of Audit 1 to 3 focus and results

1.2.1 Focus of Audit 3

The main points objectives for Audit 3 were to:

- Follow up from previously raised issues where clarification or further research was needed;
- Continue exploring the effective and efficient LAS implementation by the responsible MACs;
- Understand the budgetary constraints that are reportedly limiting the fieldwork of most LAS implementing MACs;
- Continue the Baseline review into VPA annexes.

All FDA comments on the Audit Report 2 received on 28.11.2018 through the NAO and the IA's responses were incorporated in the Audit 3 report[1].

1.2.2 Results of Audit 3

The following results of Audit 3 are extracts from the Audit 3's General conclusion.

"What is the "**big picture**" that comes out from this Audit report #3?

By now, the Independent audit has already covered a fairly **comprehensive scope** of the Liberia LAS. The **list of new and unresolved "previous" issues is certainly growing**. The Independent auditor (IA) is attentive to feedback received on previous IA reports, from the JIC or through the JIC Aide-memoirs, or from the new JIC Working Group on the IA, or from follow-up with auditees. The fact is, there is **little information provided to the IA showing effective corrective measures being adopted in comparison of the growing backlog of issues**.

The "big picture" is for everyone to figure out from the list of issues.

For the IA, there is growing evidence of **paralyzed institutions** not fulfilling their day-to-day law enforcement responsibilities as stipulated in the VPA Legality Matrix that is derived from Liberia laws and regulations. And there is also growing evidence of **increasing illegality** in the Liberian forest sector and of Export Permits being issued illegitimately in view of the requirements in force for their issuance. From the building corpus of audit findings and issues raised, the broad situation is apparently **showing no signs of improvement**, or is in fact deteriorating. **Transparency, communication and accountability gaps** can only but dissimulate the real situation. In conclusion, there is **still a long way before the LAS could be considered operational** and FLEGT Licenses issued in Liberia. That might also require some **structural adaptations of the LAS framework**.

The first audit had revealed preliminary indications that already represented clear and converging findings through the different activities. The second audit confirmed a **"mixed picture"** at that stage of LAS implementation.

The **positive side** still includes, among others:

- A **comprehensive and well documented legal and regulatory framework** for verification of legality, responsive to the VPA requirements, and enriched with a growing range of procedures, guidelines, guidance and checklists to support practical implementation of the LAS and promote compliance with forest law in Liberia. Progress is also being made to complement existing legislation, especially with regards to community forestry and conservation;
- Necessary **institutional arrangements** being developed, strengthened or maintained;
- **Exemplary inclusive and participatory** law reform and VPA negotiation and implementation **processes** so far for the key stakeholder groups; and
- A **powerful IT solution for the COCIS**, providing **effective traceability and verification of tax payment**, two of the three pillars that contribute to the approval of current export permits prefiguring the future FLEGT Licenses."

[1] In Chapters 3.2, 6.1.9.1, 6.4.11, 7.3.7.3, 7.3.11.3 and 7.3.15 for further integration.

1.2.3 Focus of Audit 2

Compared to Audit 1, the second Independent audit was more directly related to the structure and specific elements of the LAS' operational framework (as per VPA implementing annexes), and more focus was placed on the capacity of relevant government bodies to fulfill their responsibilities.

In the prevailing context for the Audit 2, of handover of the capacity and systems of the Legality Verification Department (LVD) developed by SGS, to the FDA, it was therefore decided to give a particular focus for that second audit on **the LVD**.

The three main functions that the LVD fulfills as part of the broader LAS are herewith recalled (as per 6.1.7.1-3):

1. **Data maintenance in the COCIS** (Chain-of-Custody Information System, called LiberTrace as supplied by SGS)
2. **Field inspections** for forest contract holders' compliance with (a) the Chain of Custody System (COCS) and (b) forest management and harvesting requirements[2]
3. **Audit of VPA implementation** and compliance by the other VPA implementing partners with their obligations as specified in the Legality Matrix.

1.2.4 Results of Audit 2

The following "results" are based on the General conclusion from the Audit 2.

The **preliminary findings** from the Audit 1 were **followed upon** as a matter **of priority**, along with new findings. The second audit mostly confirmed the **"mixed picture"** of progress in LAS implementation that the first audit had revealed.

The **positive side** included, among others:

- An increasingly **comprehensive and well documented legal and regulatory framework** for verification of legality, responsive to the VPA requirements and enriched with a growing range of procedures, guidelines and checklists to support practical implementation of the LAS and promote compliance with forest law in Liberia. Further progress was being made to complement existing legislation, especially with regards to community forestry and conservation (Audit 2 report (A2R), 3.1);
- Necessary **institutional arrangements** being developed, strengthened or maintained (A2R, 6.1.1.3);
- **Exemplary inclusive and participatory** law reform and VPA negotiation and implementation **processes** so far for the key stakeholder groups (A2R, 6.1.2.11); and
- A **powerful IT solution for the COCIS**, providing **effective traceability and verification of tax payment**, two of the three pillars that contribute to the approval of current export permits prefiguring the future FLEGT Licenses (A2R, 6.4.3.2).

[2] According to a precise division of roles and responsibilities between different government bodies for the coverage of all legal requirements as indicated in the VPA Legality matrix yet to be explored by IA.

On the **negative side**, the IA recorded new 'risks and issues' in its database, whilst not much information was received about corrective or improvement measures being adopted and implemented regarding previously reported issues.

Regarding the VPA legal and regulatory framework:

- The remaining imperfections in Liberia's law, regulations still missing, and new regulations not yet transposed into it call for an **update of the Legality matrix**, which the JIC is entitled to amend[3];
- The **slow development of new regulations** is hampering their timely application to the LAS and enforcement (A2R, 3.1);
- **Loopholes** exist **in** the support to the **LAS implementation** process, in the division of scope between the two main external service providers (A2R, 3.1);
- R**evised LVD Procedures** are **not being formally approved** as legally binding on forest stakeholders (A2R, 3.1);
- The **new law** titled 'Forest Industrial Development & Employment Regime Act', that deferred the payment of outstanding fees owed by holders of forest management contracts, was **passed without consultations** with the stakeholders and has **raised questions** (A2R, 3.1);
- With the regulation on minimum cutting diameters no longer clearly in place, and the Guidelines for Forest Management Planning (2009) being ignored in that regard, **cutting diameters are being reduced** on an *ad-hoc* basis and against scientific rationale for some species (A2R, 3.5);
- A significant number of requirements captured in the Legality matrix are considered no longer relevant and therefore not enforceable, although full compliance with all requirements is currently requested for licensing; thus it is suggested that **the Legality matrix also needs to be revised** (A2R, 3.2).

Regarding the current institutional framework and arrangements:

- The **participatory forest governance** requested by the VPA is **incomplete** until the Forest Management Advisory Committee (FMAC) is duly established to play its independent advisory role to the FDA as provided for in the NFRL (A2R, 3.3);
- LAS' efficiency is undermined by **conflicts of interests** within the FDA as an institution (A2R, 3.4).

Regarding overall legal compliance of private operators, the levels of non-compliance that were found during Audit 1 relative to the Legality matrix and the CFHP clearly show that current log exports from Region 3, and likely all Regions of Liberia, **would not allow FLEGT Licenses to be issued** (A2R, 3.6).

On the other hand, it may be **unrealistic and counter-productive to insist on *full* compliance** with *all* the requirements of the Legality matrix. Distinctive responses to non-conformances regarding companies' operations or products and for the issuance of FLEGT Licenses may be needed to avoid blocking the system (A2R, 3.7).

Regarding Implementation of the role of Government departments:

[3] See 7.3.1.16 VPA Art. 26,3

- A CFMA **management plan** was **approved in contradiction with Liberian Law** and guidelines for sustainable forest management planning (A2R, 3.8);
- FDA Commercial Forestry Dept. inspectors in two Regions showed a grave **lack of resources for running field inspections** and a resulting lack **of independence from operators** for logistical support. The absence of follow-up on the field inspection reports that are submitted to the Head office significantly undermines the authority of FDA field staff as well as overall compliance and enforcement (A2R, 3.9);
- The Manual of Procedures for LVD staffs (July 2016) shows a number of issues due to either **incorrect information** or **lack of implementation in the field** in relation to CoC. Shortfalls were also identified in those procedures in relation to auditing as well as **gaps in supporting documents and lack of official adoption** by the management team (A2R, 3.10);
- The LVD Audit team includes **unqualified staff members**, there is outstanding **confusion as to which set of procedures is currently in use** by the team, and the capacity building of the team also seems to be undermined by the **absence of (re-) training to the current procedures** (A2R, 3.12);
- The **LVD audit plan** prepared and agreed upon **for 2018** had **not** been **implemented** as of April 2018 (A2R, 3.11);
- Based on comparing the non-compliances seen by the IA in the field with those raised in the LVD report, the **LVD Audit team** is **not conducting sufficiently thorough audits** during their fieldwork (A2R, 3.13);
- In view of the **functionality issues** compiled regarding the auditing section **of LiberTrace,** the software showed clear opportunities (i.e. needs) for improvement. Instances of bad speed performance of the system affecting the users were also evidenced (A2R, 3.14);
- A significant part of the **information in Libertrace** for the audited FMC during Audit 1 was inaccurate or had not yet been loaded, revealing **data management issues** by the LVD (A2R, 3.15);
- From Audit 1, the **CFHP checklist** was **not being used by the government departments** in charge as per the division of responsibilities for inspections and audits, and a number of **pre-felling requirements** were **not being enforced** (A2R, 3.16);
- **Export permits** are **currently being issued** on the basis of minimum legal requirements, **not broad legal compliance** to the level of the Legality matrix, which may generate **illegitimate legality claims** by timber traders in the context of international timber regulations or forest certification (A2R, 3.17);
- **Current log exports** are **receiving Export permits (EPs) without complying with** the list of **official "current regime" requirements** listed by the FDA, suggesting a general lack of enforcement and, in some cases, discretionary decisions. LVD reviews using the "current regime" requirements for EP issuance in fact appeared to be both incomplete and incorrect (A2R, 3.17);
- Many **requirements in the Legality matrix** are **not currently being enforced**. This is a clear gap in Liberia's preparation towards full LAS implementation - before the complete LAS can be evaluated successfully and the VPA can be declared operational (A2R, 3.18);

- Risks exist of **illegal loading of ships** where transshipment occurs at sea from rafts of floating logs or barges to self-loading ships and of **smuggling through unmanned border crossings** (without an Export permit) (A2R, 3.19);
- The IA received **no evidence** of any information **of** any "**monetary fines imposed or regulatory action taken** against any contractor" being disclosed on the FDA website. With one exception in February 2018, no sanctions were in fact being imposed for violations of forest laws on the basis of field reports (A2R, 3.20);
- JIC **annual reports** are **yet to be published** for 2015, 2016 and 2017 (A2R, 3.21);
- In several instances the **Independent Auditor** has **not** been **given** due **access to** all the **information** necessary for the performance of its functions (A2R, 3.22).

Regarding the design of the VPA, to the detriment of the timber trade, the VPA Annex I containing the list of **timber products** that are **subjected to** the LAS and to **FLEGT licensing** is **not consistent with** those in the EU Timber Regulation (**EUTR**) (A2R, 3.23).

Finally, the level of **continued political, financial and technical support to the VPA** is a risk that the IA has been following up as since its Inception report. The IA had no clear indication, upon closing the Audit 2 report, regarding the extension or renewal of current technical assistance contracts (DAI/VPASU, SGS/LVD) in their current forms. The IA was however aware of tendering processes being launched for "Long Term Technical Assistance" and for the evaluation of the LiberTrace software, and of a new EU 5-year financing agreement for the VPA. The question of the need for more **result-oriented financial support** to the VPA was also raised.

All these findings can be found in Chap. 3 (Main conclusions & recommendations) of the Audit 2 report, itself referring to more detailed analyses in either Chap. 6.4 **(**Follow-up on previous issues) or Chap. 7 (new issues); all risks and issues also being recorded in the "Progress" tracking database (A2R, Annex 8.5).

For each issue, a recommendation for consideration by the JIC was proposed, all guided by the perceived needs to strengthen a number of processes or aspects.

The following issues (A2R, 3.17; from Audit 1) were also to be followed-up during the next audits. The IA expects to be enabled to monitor and draw on the results from relevant forest concession review initiatives currently being launched:

- Much of the documentation related to the original bidding process and the issuance of the concessions to the successful bidder is missing. This reason, alone, implies ongoing non-conformances related to the Legality matrix of operators, thus making it technically impossible to issue a FLEGT License in Liberia until this issue is resolved.
- FMC "X" has not followed the correct steps described in the Management guidelines to prepare a long-term (25 year) management plan.
- No company in Liberia is currently preparing appropriate 5-year compartment plans.
- No company in Liberia is currently completing all block surveys in the year prior to the new logging season.
- No block planning is currently being done as required in the Liberia CFHP.

- Annual harvesting plans are thus incomplete, if and when available.
- FDA is approving Annual Harvesting Certificates (AHCs) without evidence of fully completed block enumerations for the whole next logging season.

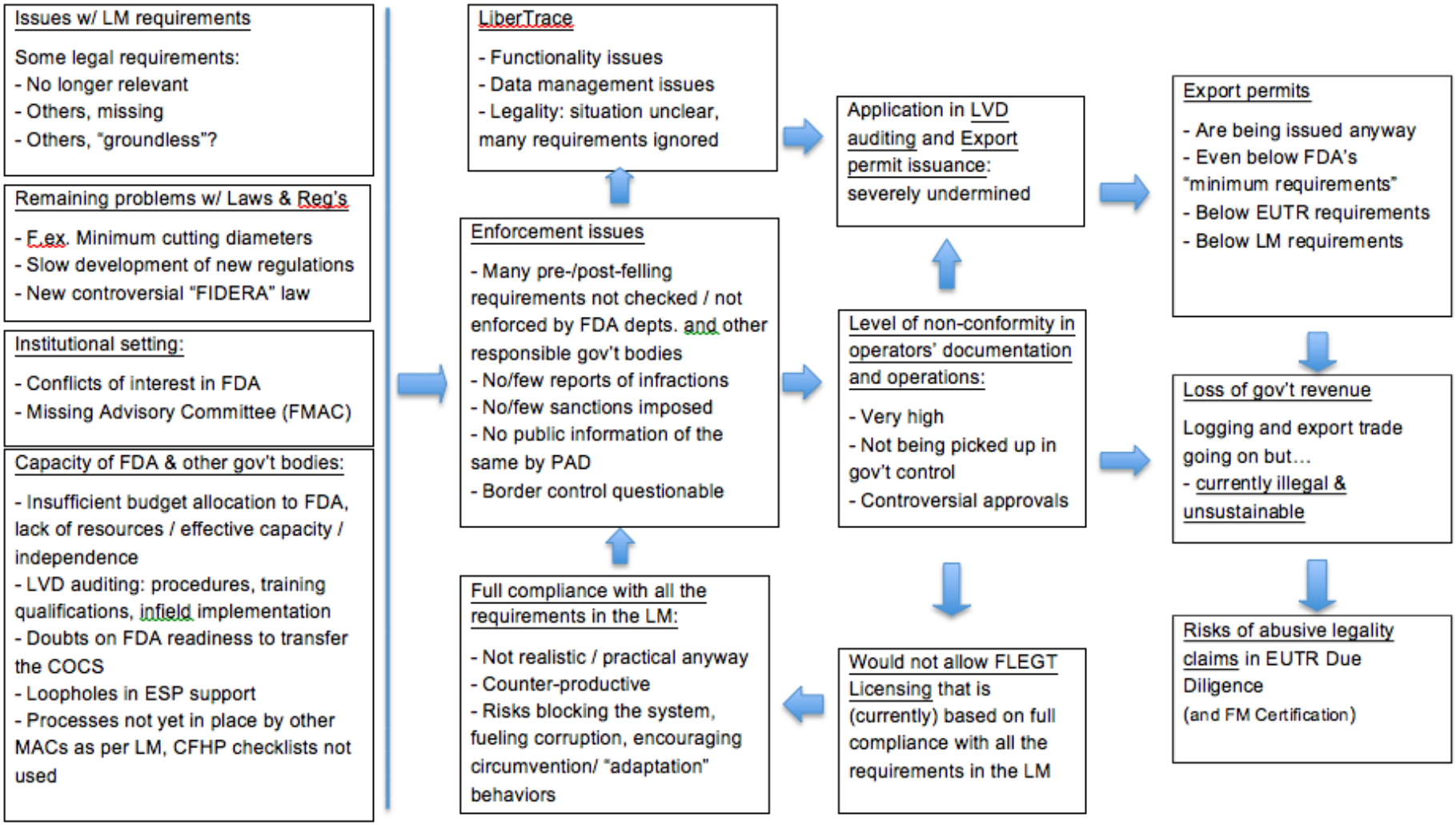
What the above told about the effectiveness of the Legality Assurance System was that most elements were in place but still needed to be made to work more effectively, which would require essential virtues of willingness, transparency, accountability, realism and pragmatism, and desire for financial self-sustainability.

The next **Independent audit** (no.3) of the **Liberia LAS** would resume from where the second audit left off.

1.2.5 Graphical representation of the current problems identified (Audit 1 & 2)

The “current problems identified during Audit 1 & 2”, combined, are represented together in the updated diagram from Audit 1: see next page.

Current problems identified during Audits 1&2



1.2.6 Audit 1 focus and results

Due to circumstances, the Audit 1 methodology that was implemented included:

- A limited 'top-down' baseline review of VPA implementation, which as a result mostly remained at the general level of the VPA articles (not yet the annexes);
- More extensive than planned 'bottom-up' auditing in the field (one FMC) and into LiberTrace.

This resulted in the IA drawing preliminary general conclusions:

- Current practice (in e.g. field operations, export permit requirements) is *highly non-compliant*;
- The confrontation of such evidence with the outcome of government control (which showed limited action), or with the rules, highlighted evidences of broad deficiency of the LAS as currently being implemented in particular by several departments of the FDA.

The current outlook from Audit 1 in fact showed:

- A rather *negative* conjunction of intricate factors, often difficult to qualify as "cause" or "effect" (now combined with the results of Audit 2 in the above diagram 'Current problems identified during Audits 1 & 2');
- But also a range of possible responses (now combined with the recommendations from Audit 2 in the above section 'Key recommendations from Audit 1 & 2'); and
- An overall situation that could still be turned into a more *positive*, this time, conjunction of factors.

In meetings with key VPA implementing partners, the IA Team leader explained the context and informed that the Audit 2 would reach the stage where the Independent audit methodology would connect more to the operational VPA/LAS framework (VPA annexes, not only VPA articles like in Audit 1):

- Through the continued top-down baseline review (or gap assessment), deeper into Annex II (LAS, LM, COCS…);
- To look more systematically at what institutional and operational arrangements Liberia has implemented vs. the VPA commitments (i.e. what Liberia should have put in place), in other terms what the responsible government and other bodies "should be doing" and "whether they are doing it";
- And to only then issue conclusions and recommendations, for JIC decisions.

The comments received also served to apply some inflections to the Independent Audit methodology thus far (See A2R, 4.3).

2 CONTRACTUAL FRAMEWORK FOR THIS AUDIT REPORT

This report is the fourth **Audit report** prepared by SOFRECO, the appointed **Independent auditor** (IA) of the timber **Legality Assurance System (LAS)** that is being implemented under the **FLEGT Voluntary Partnership Agreement (VPA)** signed between the **European Union** and the **Government of Liberia**.

The IA services are currently provided under a contract initially awarded for 3 years to the SOFRECO Consortium ("the **Contractor**"), titled "Efficiency of the FLEGT licensing scheme [once operational] and effectiveness of the Legality Assurance System" (the "**Contract**"). Following the delayed implementation of the Audit no.4, a one-year extension of the Contract is being formalized.

The IA plays an important role in the LAS, and in the VPA as a whole, since EU Customs will eventually accept timber from Liberia for free circulation into the EU market; this will be based on FLEGT Licenses, when the Government of Liberia will be ready to issue these licenses as a result of the effective implementation and enforcement of the Liberia LAS. The IA is the main instrument designed to assess whether the FLEGT Licenses as a system can be trusted as acceptable evidence of a reliable traceability and legal compliance control chain being applied and enforced from the forest to the point of export out of a VPA country.

The Contract was signed on 06.03.2017 between the **National Authorizing Office (NAO)** in the Ministry of Finance and Development Planning (MFDP) and SOFRECO and "Endorsed for financing by the European Union" represented in Liberia by the EU Delegation to Liberia (EUD). The NAO is designated as the IA's '**Contracting Authority**' and the official channel for communication with the Contractor. The IA is however placed under the supervision of the **Joint Implementation Committee (JIC)** of the EU-Liberia VPA that receives and approves the IA reports, while the **Forestry Development Authority (FDA)** is identified as the main beneficiary of the IA services.

Implementation of the Contract started on 22.03.2017 and was due to last until 05.03.2020 (3 year's from the contract *signature* date). To date the Contractor has submitted an **Inception report** (08.08.2017), five **Six-monthly progress reports**

(23.10.2017, 25.06.2018, 01.02.2019, 11.06.2019, 29.10.2019), and its first three **Audit reports** (23.02.2018, 09.10.2018, 28.02.2019).

The fourth audit ("Audit 4") of the IA, out of a total of five main audits initially scheduled in three years, and to which this new audit report relates, took place at the end of 2019 and included a mission in Liberia from 21.10 to 08.11.2019.

An Audit report is indeed due after each of the five main audits and may consist of several different reports (ToR 4.2):

- A 'Preliminary audit report' is due 4 weeks after each [in-country] audit mission; therefore the submission of this "Audit 4 report" (A4R) by the Contractor was due on or before 06.12.2019 "unless otherwise agreed with the JIC". Due to the restructuring of the report structure, to required investigations, to the late (or absent) submission of information by some auditees, and to limitations in the availability of the IA Team, however, the submission of this report with its two volumes has been delayed;
- A 'Final audit report' may be requested by the JIC for the IA to address JIC's comments (which the IA shall receive within 45 days of the submission of the Preliminary report), in which "the IA will incorporate responses to JIC comments and change requests" (VPA Ann. VI, 5.2.4);
- A 'Public summary audit report' may be prepared at the JIC's request;
- "Once the FLEGT licensing scheme becomes operational, independent audit reports validated by the JIC will become public documents. […] Publication of the audit reports while the systems are still under development [however,] will need to be decided upon by the JIC. In this period, the IA may be asked to prepare for each audit a full report with supporting data for the JIC and a separate summary report for publication". (ToR, Annex II).

Other relevant extracts from the ToR and VPA

The auditor shall: provide printed copies for the members of the JIC and (c) present all reports to the JIC, which shall comment on them; and (d) prepare final reports which reflect the JIC's comments. The costs of printing will be part of the provision for incidental expenditure (ToR 4.2, 2).

The reports of the IA and any corrective action required will be discussed in the JIC (VPA Ann. VI, 5.2.4). The IA will therefore expect action as follow-up from the audit reports to be discussed in the JIC and passed on to the IA. Plus, at the request of NAO/ EUD/ FDA, the IA will examine any point related to the implementation of Liberia VPA (O&M, A3.2.4).

Worth mentioning in this regard is the decision of the 6th JIC's held on June 13-14, 2018 to "in order to manage future audits (…) create a working group that will be dedicated to the steerage of the IA and the review of reports, composed of EU and Government of Liberia" (6th JIC's Aide memoire, 26).

3 REMINDER OF THE MAIN CONCLUSIONS AND RECOMMENDATIONS FROM AUDIT 3

The main conclusions and recommendations (C&Rs) in this chapter were either new C&Rs from the Audit 3 or existing C&Rs from previous audits. Some of these C&Rs may have been slightly updated as a result of the Audit 4; but all the C&Rs that were more significantly revised are presented in the Volume 1 of this Audit 4 report (A4R).

All these C&Rs were consistent with the database of the key risks & issues registered so far by the IA provided as Annex 7.2 to the Audit 3 report (A3R). The new C&Rs were summarized from Chapters 6.1 to 6.3 (new and on-going reviews) and 6.5 (new issues from reports or complaints), while existing C&Rs were updated from reviews in 6.4 (Follow-up on previously reported issues) and Annexes 7.3.1 to 7.3.15 and 7.4 to the Audit 3 report.

Each heading refers to an element of the LAS that the IA had reviewed to assess the efficiency of its implementation (the IA opted for headings that do not contain or describe: the IA's work, the finding (risk or issue) itself, the conclusion, or a recommendation).

3.1 Legal and regulatory framework relative to LAS implementation

This C&R has been revised in the Volume 1 of this Audit 4 report.

3.2 Minimum cutting diameters

This C&R has been revised in the Volume 1 of this Audit 4 report.

3.3 Current relevance of the Legality matrix

This C&R has been revised in the Volume 1 of this Audit 4 report.

3.4 Participatory forest governance in Liberia

This C&R has been revised in the Volume 1 of this Audit 4 report.

3.5 Institutional setting for VPA implementation

This C&R has been revised in the Volume 1 of this Audit 4 report.

3.6 Operator's compliance with Legality matrix requirements, assessed against the SD-01 and CFHP audit checklists

This C&R has been revised in the Volume 1 of this Audit 4 report.

3.7 VPA management of non-conformances

This C&R has been revised in the Volume 1 of this Audit 4 report.

3.8 Implementation of the role of Government, financing of the Liberian Forestry Development Authority (FDA) as a whole

References in this Audit 4 report, Volume 2: 7.4.9 (for HII 29).

Main conclusion

LVD now benefiting from direct funding through the SGS-LRA Escrow Agreement. But severe inability of FDA and other key departments to otherwise fulfill their functions as per the Legality Matrix, due to the lack of funding from MFDP, particularly for goods and services, and due to the late release of funds into the current fiscal year.

Totally insufficient provision for FDA, and a downward trend. The key departments (Community Forestry, Commercial Forestry and Forest Law Enforcement) are even more limited in their funding, showing that the little funding received by the FDA for goods and services is being spent on issues not listed in the LM.

There had been cuts in Goods & Services, not in Salaries, admittedly creating imbalance between salaries (number of employees on the payroll) and available means to function and operate, and challenges as a lot of staff was not going to the field as a result (and stay idle in offices).

Thus, the FDA in general, and the key departments in particular, were found totally incapacitated to perform their functions according to the requirements stipulated in the Legality Matrix.

Over and above the insufficient budget, there had been no funds released for goods and services to FDA from MFPD to FDA yet (1 July through to 23 October 2018) further aggravating the situation.

Main recommendations

Allow FDA in future to prepare annual budgets accorded to the needs; clarify future funding mechanism under new Local Government Act; meanwhile a contingency plan is urgently needed to determine and address priorities.

Associated **ISSUE** in the IA Progress Database: ref. **HII 29**.

3.9 Implementation of the role of Government, FDA approval of pre-felling requirements

This section can be found in the separate Audit 4 report, Volume 1, where it has been updated; with the exception of the below topic.

From Audit 1, in relation to pre-felling requirements

References in this audit report: 6.4.9 (for HII 7).

Conclusions

10. FMC "X" has not followed the correct steps described in the management guidelines to prepare a long term (25 year) management plan.
11. No company in Liberia is currently preparing appropriate 5-year compartment plans.
12. No company in Liberia is currently completing all block surveys in the year prior to the new logging season.
13. No block planning is currently being done as required in the Liberia CFHP.
14. Annual harvesting plans are thus incomplete, if available.
15. FDA is approving Annual Harvesting Certificates without evidence of fully completed block enumerations for the whole next logging season.

Recommendation: Enforce all the regulatory steps before an operator is allowed to start harvesting (not to mention before exporting with an Export permit). The IA expects to be enabled to monitor and draw on the results from relevant forest concession review initiatives currently being launched.

Associated **ISSUE** in the IA Progress Database: ref. **HII 7**.

3.10 Implementation of the role of Government, FDA field inspections of post-felling requirements (Commercial Forestry Dept.)

This section can be found in the separate Audit 4 report, Volume 1, where it has been updated.

3.11 Implementation of the role of Government, CFD Environmental Impact Assessment Division

This section can be found in the separate Audit 4 report, Volume 1, where it has been updated.

3.12 Implementation of the role of Government, the FDA Community Forestry Department (CyFD)

References in this audit report: 6.2.2.2 in Vol.1 for HII 27 and HII 37; 6.2.2.3 in this Vol.2 for HII 28, and 6.5.2 also in this Vol.2 for MII 12.

Main conclusions

- A set of procedures exists for the issuance of CFMAs, based on the "Nine steps" Handbook, but not for FMCs and TSCs, to ensure that affected communities are consulted by FDA and give their prior informed consent to the proposed concession, and that the social agreement between the contract holder and the affected community is attested, as per respectively Indicators 2.1 and 3.1 of the LM. There is thus no consistent process applied in meeting those requirements;
- It is however currently unclear to which FDA Dept. the responsibility for monitoring compliance with social agreements with communities is assigned: CyFD (natural function) or CFD (better placed in-field for efficiency);
- There is insufficient (and still decreasing in future years) budget for CyFD, including a grossly inadequate Good and services budget at 6% of the total CyFD budget and no Capex budget included for the current financial year. Without support and proper means for field staff to operate, the other issues (e.g. no field inspection schedule available, no evidence of recommendations for penalties) are contingent.

Main recommendations

- Ensure a consistent process is applied to meet the 'prior informed consent' requirement for affected communities in the issuance of FMCs, TSCs and CFMAs;
- Formal confirmation by the MD of which FDA Dept. is responsible for the enforcement of social obligations towards communities;
- Prepare a budget that reflect the actual needs of the CyFD and allows for the fulfillment of the requirements stipulated in the LM, including sufficient provision for Goods and services and Capex.

Associated **ISSUES** in the IA Progress Database: ref. **MII 12, HII 27, HII 28, HII 37**.

FDA/IAWG response to the Main R&C in the Audit 3 report [4]: none.

3.13 Implementation of the role of Government, Law Enforcement Division (LED) of FDA

This C&R has been revised in the Volume 1 of this Audit 4 report.

3.14 Implementation of the role of Government, Public Affairs Division (PAD)

References in this audit report, Vol.2: 7.4.8.2 (for HII 24).

[4] As per the file 'FINAL MATRIX OF THE VPA LEGALITY ASSURANCE SYSTEM_08152019.pdf' sent by the NAO to the IA on August 18, 2019

Main conclusions:

- PAD's public communications and outreach work increases participation, transparency and accountability in VPA implementation processes, aligning objectives, strategies and activities to maximize the benefits and create public trust for FDA.
- Significant activity was maintained up to 2015 or 2016, essentially with VPASU and some REDD support.
- It is questionable whether, or to what limited extent, efforts have been maintained since then. Limited information has apparently been produced since then (subject to posts on the FDA website), which would indicate that the Unit is currently running idle, in a context of underfunding of the institution.
- Most critical is the current closure of the FDA website, which denies the VPA implementation process from essential values including to publicly reflect the dynamics of the process to maintain the momentum, and denies stakeholders from any information. Maintaining the FDA website is one of the PAD's main tasks. The FDA website (www.fda.gov.lr) is the main channel for publication of information related to the Liberia forest sector and the VPA, which is a commitment from Liberia under the VPA (Art. 21). And it has been consistently down for months (not showing any sign of being maintained any more) and not fulfilling its key communication role in support of LAS and NBSTB implementation and *de facto* obstructing these processes.

The apparent closedown of the FDA website suggests a severe degradation of the situation regarding transparency of information in relation to the LAS implementation process.

Main recommendations:

Urgently develop and implement an action plan to reactivate the PAD and ensure that it fulfills its key roles and responsibilities:

- General "extension" role vis-à-vis the VPA (dissemination of information, sensitization, awareness on the VPA) within FDA HQ and regional offices, and towards the outside among civil society and communities.
- Reactivation and maintenance of the FDA website, the main channel for publication of information related to the Liberia forest sector and the VPA: reactivate the website, regularly update its content, and maintain maximum uptime; use a "Website uptime and performance monitoring" service and publish regular corresponding reports.
- With regards to public disclosure of information, implementation of the VPA Annex IX on 'Public information and transparency measures', particularly in relation to law enforcement, to: routinely gather, collect, publish and/or maintain data relating to information on law enforcement in concession areas.

Associated **ISSUE** in the IA Progress Database: ref. **HII 24**.

FDA/IAWG response to the Main R&C in the Audit 3 report [5]**:** none.

[5] As per the file 'FINAL MATRIX OF THE VPA LEGALITY ASSURANCE SYSTEM_08152019.pdf' sent by the NAO to the IA on August 18, 2019

3.15 Implementation of the role of Government bodies (Other MACs), Environmental Protection Agency (EPA)

References in this audit report: 7.4.10.1.

Main conclusions

The Environmental Protection Agency (EPA) is virtually paralyzed in its ability to fulfill its responsibilities with regard to field inspections of forestry operations in Liberia under Principle 5 (Environmental obligations) of the Legality Matrix. This is primarily due to a lack of resources within the Agency.

No consistent inspections are currently occurring of any forest concession in Liberia by the EPA. There is no memory of any fine issued over the last 5 years.

Other issues include the lack of a clear division of responsibilities between FDA EIAD and EPA and the lack of procedures and training for EPA EIA inspectors. The CFHP checklist exists but is not being used by EPA inspection staff.

Main recommendations

It is recommended that the EPA first be supplied with the necessary resources that will allow them to fulfill their responsibilities regarding inspections of the all forestry operations in the country.

There is a need to officially clarify the division of responsibilities between FDA EIAD and EPA and to improve the Legality Matrix accordingly. Indicator 5.3 of the Legality Matrix should only be checked by EPA, while Indicator 5.4 should only be checked by FDA.

FDA/IAWG response to the Main R&C in the Audit 3 report [6]: none.

3.16 Implementation of the role of Government bodies (Other MACs), Ministry of Labor (MoL)

References in this audit report: 7.4.10.2.

Main conclusions

The MOL is virtually paralyzed in its ability to fulfill its responsibilities with regard to checking on forestry operators in Liberia for compliance with many legal requirements regarding the employment of Liberian nationals under Principle 8 (Workers' rights, health safety and welfare) of the Legality Matrix. This is primarily due to a lack of resources within the MOL.

No field inspections are done on operators– only office inspections.

Other issues include: lack of procedures, inspection checklists and templates, and training for MOL inspectors to conduct inspections of forestry operations in a consistent, credible and replicable manner across all companies in Liberia to the requirements of Indicators 8.1 to 8.6; no labor solicitor available through MOL; no officers appointed to conduct hearings in relation to labor grievances.

[6] As per the file 'FINAL MATRIX OF THE VPA LEGALITY ASSURANCE SYSTEM_08152019.pdf' sent by the NAO to the IA on August 18, 2019

Countrywide inspections of forestry concessions in April/May 2018 however resulted in several substantial fines having been issued e.g. Company A was fined USD25 000 for violating employment conditions and employing aliens without work permits. However, no planned inspections are completed by MOL according to a set timetable.

Main recommendations

It is recommended that the MOL first be supplied with the necessary resources that will allow them to fulfill their responsibilities regarding inspections of the all forestry operations in the country.

FDA/IAWG response to the Main R&C in the Audit 3 report [7]: none.

3.17 Implementation of the role of Government, Manual of CoC procedures for LVD staffs

References in this audit report, Vol.2: 7.3.11.1 for MII 16, and 7.4.6.1 for HII 15.

Main conclusions

The Legality Verification Department (LVD) of the FDA currently has four main roles: (i) COCIS management, (ii) CoC inspections, (iii) audits on the forest sector control exercised by other government bodies, and (iv) approval of Export permit requests based on overall legal compliance.

The Manual of Procedures for LVD staffs (July 2016) shows a number of serious issues in relation mostly to CoC, due to either incorrect information or lack of implementation in the field, and also now with the control of containers.

The numbering of current SOPs is also confusing.

Main recommendations

The Manual of Procedures for LVD staffs (updated version) must be entirely revised and the procedures must be implemented in the field.

Envisage renumbering the SOPs.

Associated **ISSUES** in the IA Progress Database: ref. **HII 15** and **MII 16**.

FDA/IAWG response to the Main R&C in the Audit 3 report [8]: none.

3.18 Implementation of the role of Government, Documentation used by the Auditing section of LVD

References in this audit report: 7.4.6.3 (for MII 2).

Main conclusions

During the Audit 1 it was apparent that capacity building of the LVD audit team was undermined by the absence of (re-) training to the current procedures (Manual of LVD (audit) procedures, 2016). Furthermore, a number of shortfalls were identified in those procedures in relation to auditing as well as gaps in supporting

[7] As per the file 'FINAL MATRIX OF THE VPA LEGALITY ASSURANCE SYSTEM_08152019.pdf' sent by the NAO to the IA on August 18, 2019
[8] As per the file 'FINAL MATRIX OF THE VPA LEGALITY ASSURANCE SYSTEM_08152019.pdf' sent by the NAO to the IA on August 18, 2019

documents; a full set of more specific procedures had reportedly been developed for the LVD auditing section but didn't seem to have been implemented yet and no copy of these documents was given to the IA.

The above was not fully reassessed during Audit 2, but:

- The LVD audit plan prepared and agreed upon for the 2018 calendar year had not been implemented;
- Procedures for the execution of audits by the auditing section of the LVD have not been officially adopted by the management team; and
- There is clearly outstanding (in view of Audit 1 findings above) confusion as to which set of procedures is currently in use by the audit team;
- These issues occur despite the fact that the documentation used by the Auditing section of the LVD was developed in conformity with ISO 9001 as part of the Quality Management System (QMS) added by SGS to the LVD's functions (as identified in 6.1.7.1).

In conclusion, field audits have been all but halted, management of procedures and other documents is not satisfactory, and capacity building of the LVD audit team seems to be undermined by the absence of (re-) training to the current procedures.

Main recommendation: The documentation and functioning of the auditing system of the LVD should be revised by SGS to meet the minimum requirements of internationally recognized forest legality auditing system protocols. In particular, documentation used by the LVD audit team needs revision and the training of the audit team should be constantly aligned to the latest compilation of those procedures.

Associated **ISSUE** in the IA Progress Database: ref. **MII 2**.

FDA/IAWG response to the Main R&C in the Audit 3 report [9]**:** none.

3.19 Implementation of the role of Government, LVD auditor training & qualifications

References in this audit report: 7.4.6.2 (for HII 16).

Main conclusion: The LVD procedures and staff show serious gaps in relation to auditor training & qualifications and related records. The auditing team includes unqualified staff members.

Main recommendation: Document and apply a procedure in relation to auditor qualifications and records.

Associated **ISSUE** in the IA Progress Database: ref. **HII 16**.

FDA/IAWG response to the Main R&C in the Audit 3 report [10]**:** none.

[9] As per the file 'FINAL MATRIX OF THE VPA LEGALITY ASSURANCE SYSTEM_08152019.pdf' sent by the NAO to the IA on August 18, 2019

[10] As per the file 'FINAL MATRIX OF THE VPA LEGALITY ASSURANCE SYSTEM_08152019.pdf' sent by the NAO to the IA on August 18, 2019

3.20 Implementation of the role of Government, LVD auditing in the field against the CFHP Checklist

References in this audit report: 7.4.6.4 (for HII 20).

Main conclusion

As part of assessing whether SGS/LVD auditors are correctly using the SD 01-01 and CFHP checklists, the IA compared the results of an LVD audit of a CFMA conducted in January 2018 with what the IA field audit team was able to see in the field by visiting the same CFMA during Audit 2.

Based on the non-compliances seen by the IA in the field and comparing this with the 12 CARs raised in the LVD report, it can be concluded that the LVD audit team is not conducting sufficiently thorough audits during their fieldwork.

Main recommendation: Improve the quality of LVD audits by strengthening related procedures, training and qualifications of auditors, and quality control by the management.

Associated **ISSUE** in the IA Progress Database: ref. **HII 20**.

FDA/IAWG response to the Main R&C in the Audit 3 report [11]**:** none.

3.21 Functionality of COCIS software (LiberTrace)

This C&R has been revised in the Volume 1 of this Audit 4 report.

References in this audit report, Vol.2: 7.4.7.1 (for MII 3).

Main conclusions

In view of the list of issues that was compiled during Audit 1 regarding its auditing section, the LiberTrace software showed opportunities for improvement due to inefficiencies and in some cases significant design and programming issues.

The remainder of LiberTrace had yet to undergo further evaluation by the IA. The issue of slowness in the system (to upload log data for exports) affecting its performance for users is said to have been fixed.

Main recommendation: The functionality issues that were raised concerning the auditing section of Libertrace should be reviewed, prioritized and addressed through changes to the software.

Associated **ISSUE** in the IA Progress Database: ref. **MII 3**.

FDA/IAWG response to the Main R&C in the Audit 3 report [12]**:** none.

3.22 Implementation of the role of Government, CoC inspections by the LVD

This C&R has been revised in the Volume 1 of this Audit 4 report.

[11] As per the file 'FINAL MATRIX OF THE VPA LEGALITY ASSURANCE SYSTEM_08152019.pdf' sent by the NAO to the IA on August 18, 2019

[12] As per the file 'FINAL MATRIX OF THE VPA LEGALITY ASSURANCE SYSTEM_08152019.pdf' sent by the NAO to the IA on August 18, 2019

3.23 Implementation of the role of Government, Data management by the LVD in Libertrace

References in this audit report in Vol.1: 6.4.11 (for MII 14 and HR 6); in Vol.2: 7.4.6.5 (for MII 4 and MII 15).

Main conclusions

The analysis of information in Libertrace for the audited FMC during Audit 1 revealed the following:

- The information in Libertrace did not accurately reflect the actual situation of the FMC allocated to the Contract Holder; and
- A significant part of the information for the FMC had not yet been loaded into Libertrace.

From follow-up under Audit 3, Operators often do not take the initiative to update their files in Libertrace for missing documents before ship loading.

Another issue that was followed-up during Audit 3 is that of logs in the company logyard, or abandoned logs identified in the field at the logging contractor blocks where harvesting had long been completed, that could not be traced in LiberTrace.

It is in fact common practice that, because the Operators have 30 days after the declared felling date to pay the stumpage, the felling is not declared in LiberTrace until the logs are prepared for export in the export logyard, the felling date information is often made up, the logs circulate without the waybill (and without being checked) and the COCS is only reconstituted retrospectively. Meanwhile the logs are not traceable back to stumps in the forest and payment of stumpage fees is delayed. Also, no other non-conformities (like diameter, prohibited species) can be known before the logyard.

Related risks, if undeclared hence potentially illegitimate logs can circulate without the waybill and without control, are that these logs are never registered in COCIS and thus processed without being declared or smuggled out of the country.

Main recommendations:

- A methodical analysis of the information and data contained in LiberTrace should be conducted by the LVD; and
- Operators should be systematically reminded of the gaps in LiberTrace so as to be enabled and encouraged to work to improve compliance levels. LVD must have a system to routinely (manually or automatically) remind the operators (to update the situation of their file and to do it right to avoid blocking the system).

Tentative solutions to the late registration of logs by Operators in LiberTrace and to the related risks:

- Dissociate felling declaration (within e.g. 20 days) and payment of stumpage (within e.g. 10 more days) to encourage early registration in COCS;
- Declare the use of barcode tags on new logs (to generate an alert in case old tags are not declared used or if tags are declared used but no logs are declared under those tags);

- Review procedures for early registration in COCS. Add consistency data checks of waybills in LiberTrace. Implement efficient, fixed or mobile roadchecks (for consistent tags and waybill, including physical description).

Associated **ISSUES** and **RISK** in the IA Progress Database: ref. **MII 4, MII 14, MII 15, HR 6**.

FDA/IAWG response to the Main R&C in the Audit 3 report [13]**:** none.

3.24 Monitoring data sharing with civil society organizations / communities

References in this audit report, Vol.2: 7.3.8.1 (for MII 13), and 6.5.2 (for HII 30).

Main conclusion:

The VPA Ann. II, 3.2c requires that civil society organizations (CS/CSOs) have a channel of communication they can use to provide the LVD and other relevant authorities with monitoring data on operators' compliance with LAS requirements (as per Ann. II, 3.2, and Figure 1).

This is partly in place through CSOs' participation in the NMSMC, in the LIC and in the CS Independent Forest Monitoring. A related Verifier is said to exist in the LM ("No complaints from communities"); and LVD can store documents, as sources of information to act upon. However, the Chain-of-Custody System (COCS) is not currently designed to accommodate such provision of data by Liberian CSOs.

In the other way around, CS/ communities are in critical need of data and expect SGS/LVD to be able and willing to share the relevant data to support the benefit sharing with communities (i.e. implementation of the NBSTB - National Benefit Sharing Trust Board). But LVD (based on LiberTrace) is not involved in checking benefit sharing and does not currently, where it is due, provide the calculations. It could easily do it for CFMAs; and for FMCs, it could manage logging data and issue reports at block level, for FDA to then allocate volumes to affected communities.

Main recommendations:

In case it was not possible to design the COCS to accommodate the provision of data by Liberian CSOs, allow CSOs/ Communities to at least access relevant data and/or provide (counter-) evidence; and facilitate the filing and processing of CS complaints or inquiries. This recommendation also links to transparency, disclosure of information and participation.

Enhance LiberTrace to provide benefit-sharing data for CFMAs. LVD to issue reports at block level or smaller areas for FDA to then do the reconciliation. Ensure block boundaries follow community areas.

Associated **ISSUES** in the IA Progress Database: ref. **HII 30** and **MII 13**.

FDA/IAWG response to the Main R&C in the Audit 3 report [14]**:** none.

[13] As per the file 'FINAL MATRIX OF THE VPA LEGALITY ASSURANCE SYSTEM_08152019.pdf' sent by the NAO to the IA on August 18, 2019

[14] As per the file 'FINAL MATRIX OF THE VPA LEGALITY ASSURANCE SYSTEM_08152019.pdf' sent by the NAO to the IA on August 18, 2019

3.25 Review of current Export permit issuance

References in this audit report, in Vol.1: 6.3.3.4; in Vol. 2: 6.4.9 (for HII 25), 7.5.3.4 (for HII 32), 7.5.3.1 (for HII 18), and 7.4.12 (for HII 3).

Main conclusions

Export permits are currently being issued on the basis of a subset of key minimum legal requirements, not broad legal compliance to the level of the Legality matrix. This must be publicly recognized so as to avoid excessive legality claims in the context of international timber regulations (such as the EUTR) or certification.

It has been found logical to use the Export permit (EP) to check on legality, and also acceptable to not cover full legality as per the VPA. It remains that all "current regime" requirements must be met as the current requirements for "legal exports" from Liberia, though not quite meeting EUTR requirements yet, and as an interim measure prior to full implementation of the LAS.

But operators are allowed to log, and current log exports are receiving EPs, without complying with the list of official "current regime" requirements listed by the FDA. This suggests a regime of general indulgence or derogation (a lack of enforcement anyway) and in some cases discretionary decisions made by the FDA to issue EPs in contravention of the requirements it has itself prescribed. The LVD reviews assessed by the IA, using the "current regime" requirements for EP issuance, in fact appeared to be both incomplete and incorrect.

On the other hand, to strictly enforce the "current regime requirements" would likely result in the suspension of all current exports and in a *de facto* closure of the entire Liberian forest sector. The measure could have dramatic economic consequences; it could also prove counter-productive, and the closure would risk being definitive.

An alternative option may be to prepare and implement an 'Enforcement plan of "current regime" requirements for EP issuance' aiming to address all critical issues within a set time frame as part of a transparent process. In case the current status quo is not regarded as an option by the JIC, then it is suggested that Liberia is faced with the need to make a clear political decision whether to:

- Continue issuing illegitimate Export permits; or
- Close down the entire Liberian logging sector, or
- Adopt the recommended "'Current regime requirements for Export Permit' enforcement plan".

New findings from Audit 3:

A new case of FDA approval of an Export Permit against SGS/LVD evidence and recommendation has been reported to the IA (6.5.4).

Export permits are being issued by FDA outside LiberTrace, without consulting with SGS/LVD (vs. against their opinion as per HII 10 above), and the main point here, is that no register is being kept by FDA of all export permits that have been issued. A parallel system of Export permit issuance presents a high risk of fraudulent issuance of illegitimate permits (7.5.3.4).

New findings from this Audit 4:

The IA is not yet aware of the impact(s) of the Concession review on the issue of missing concession documents in terms of corrective measures adopted by the FDA.

The IA focused on the approval process steps for EP issuance. All LVD/SGS/FDA line managers knowingly signed the approval of 8 EPs (out of 9) in contradiction with the recommendation made by the LVD auditing section that non-compliances raised needed to be corrected, and despite red flags related to outstanding tax payments. The IA concluded to a low security level (or high risk) for integrity in the decision-making chain; and also again highlighted the issue of conflict of interest within the FDA, regarding the functioning of the LVD, in particular the Auditing section, with the Management of the FDA (who ultimately controls the issuance of the export permits).

Main recommendations

In order to avoid that abusive legality claims are made by timber trade operators in the context of international timber regulations or certification, recognize publicly that Export permits are currently not issued based on broad legal compliance.

JIC to consider the need to urgently develop and implement a 'Current regime requirements for Export Permit' enforcement plan within a set timeframe so that no more Export permits are eventually issued for not compliant logs.

Ensure no export permits are granted against LVD evidence and recommendations.

Ensure FDA keeps a central register in a single place and public for all export permits issued for forest products and NTFPs, with incremental numbers. Any parallel system of Export permit issuance should be stopped with immediate effect.

Associated **ISSUES** in the IA Progress Database: ref. **HII 3, HII 18, HII 25**, **HII 32**.

FDA/IAWG response to the Main R&C in the Audit 3 report [15]**:** none.

3.26 Enforcement of Legality matrix requirements

References in this audit report: 7.4.12 (for HII 3).

Main conclusions

Many **requirements in the Legality matrix** are **not currently being enforced**. While this may be acceptable from a VPA implementation process standpoint until the VPA becomes operational for those requirements that go beyond the minimum requirements for current export permit issuance, this situation would clearly not enable FLEGT Licensing that is based on full compliance with the requirements of the Legality matrix. This is a clear gap in Liberia's preparation towards full LAS implementation, since the VPA can only become operational after the whole LAS functionality has been evaluated successfully and all Legality matrix requirements therefore implemented.

Main recommendation

JIC to further consider the need to prepare and implement a 'Legality matrix enforcement plan' in combination with the Legality matrix revision process (in 3.3). Subject to relevant existing initiatives, this would consist in collaborating with the responsible law enforcement bodies and VPA implementing partners, and consulting the stakeholders in order to urgently:

[15] As per the file 'FINAL MATRIX OF THE VPA LEGALITY ASSURANCE SYSTEM_08152019.pdf' sent by the NAO to the IA on August 18, 2019

(i) On the basis of current requirements in the Legality matrix, identify those requirements of the Legality matrix that are not currently being verified or enforced; repeat the exercise again after all enforceable legal requirements in the Legality matrix will have been confirmed as part of its revision;
(ii) Analyze the reasons for such situation (i.e. requirements not currently verified or enforced), and inform the Legality matrix revision process;
(iii) Where possible, replace individual administrative requirements by a single requirement to obtain one attestation of regulatory compliance with all administrative obligations from the relevant body in non-critical areas of the Law, meaning operator is "under control" in that area;
(iv) Where relevant, undertake law reforms or issue ministerial instructions to officially remove, waive or suspend the application of specific, irrelevant requirements;
(v) For those legal requirements that are not currently being verified and enforced for Export permit issuance or otherwise, but should be so, publish and implement a remedial law enforcement action plan;
(vi) Clarify which non-conformances shall be blocking for a FLEGT License and which shall not, if not all as is currently the case (See 3.7); and
(vii) Establish a monitoring and evaluation mechanism for the whole process.

Associated **ISSUE** in the IA Progress Database: ref. **HII 3**.

FDA/IAWG response to the Main R&C in the Audit 3 report [16]**:** none.

3.27 Efficiency of border control

This C&R has been revised in the Volume 1 of this Audit 4 report.

3.28 Reporting on law infringement, enforcement of sanctions, and public disclosure of information

This C&R has been revised in the Volume 1 of this Audit 4 report.

3.29 Communication and transparency

This C&R has been revised in the Volume 1 of this Audit 4 report.

3.30 Timber products subjected to the LAS

References in this audit report, Vol.2: 7.5.2.1 (for HII 31), and 7.4.14 (for LII 3).

Main conclusions

Apart from logs and primary processed wood (HS Code 44.03 and 44.07), all the other timber products listed in the VPA Annex I are currently not enrolled in the COCS. This is a clear gap, considering that the FLEGT licensing scheme shall apply to them in future.

[16] As per the file 'FINAL MATRIX OF THE VPA LEGALITY ASSURANCE SYSTEM_08152019.pdf' sent by the NAO to the IA on August 18, 2019

LiberTrace, the software developed by SGS to serve as COCIS in Liberia, could reportedly cover many more products (plywood, veneer, chips etc.), but the scope of the SGS contract has been limited to primary and secondary processing.

The VPA Annex I, containing the list of timber products that are subjected to the LAS (and its FLEGT licensing component), is not consistent with the list of products to which the EU Timber Regulation (EUTR)[17] applies (EUTR Annex[18]), which has the following negative consequences:

- By adding (or not excluding) products, in comparison with the EUTR, the Annex I is making these products "subject to FLEGT Licensing" in Liberia whereas the EUTR does not apply to them; and
- By omitting products, in comparison with the EUTR, importers in the EU will not be able to use a FLEGT License from Liberia as a way for these products to "*be considered to have been legally harvested for the purposes of this Regulation*" (EUTR, Art. 3).

Main recommendations

Apply the COCS to all timber products listed in the VPA Annex I that are being exported from Liberia, including fuel wood (HS Code 4401), which also includes rubber wood chips.

Consider a future revision of the VPA Annex I:

- To remove HS Code 4417 (Tools etc. of wood) and HS Code 4415 ("packing material used exclusively to support, protect or carry another product") from the Annex, and other added (or not excluded) HS codes, since the EUTR does not apply to them;
- To add HS Code 9403 90 30 (Wooden furniture, Parts, of wood), and other omitted HS codes, to the Annex to promote their legal trade through FLEGT Licensing in support of EUTR compliance.

Associated **ISSUES** in the IA Progress Database: ref. **HII 31**, **LII 3**.

FDA/IAWG response to the Main R&C in the Audit 3 report [19]**:** none.

3.31 Continued support to LAS implementation

This C&R has been revised in the Volume 1 of this Audit 4 report.

[17] REGULATION (EU) No 995/2010 of the EUROPEAN PARLIAMENT and of the COUNCIL of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market

[18] Timber and timber products as classified in the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 (1), to which this Regulation applies

[19] As per the file 'FINAL MATRIX OF THE VPA LEGALITY ASSURANCE SYSTEM_08152019.pdf' sent by the NAO to the IA on August 18, 2019

4 AUDIT PREPARATION

In practice, the preparation of each audit continues through its implementation, and the Preparation phase therefore overlaps with the Implementation phase. Likewise, implementation (in terms of information gathering and analysis) continues through the reporting and therefore the Implementation phase overlaps with the Reporting phase as well.

4.1 Relevant references in the IA's Terms of Reference

The Terms of Reference (ToR) for the Contract stipulate the following:

- **Role and objective** of the IA: "… The … Independent Auditor … will audit the functioning of all the aspects of the VPA Legality Assurance System (LAS). The Independent Audit (…) aims to provide credibility to the FLEGT licensing scheme by checking that all aspects of the LAS are operating as intended". (ToR 1.4);
- **Results to be achieved** by the Contractor include that "Effectiveness and credibility of the LAS is assessed through successive audits according to the approved procedures and documented in reports presented to the JIC". (ToR, 2.3).

For the above purpose, the IA shall "use the **procedures established in the IA Manual** and approved by the JIC to conduct audits, field visits and investigations, to seek feedback from stakeholders and to document and report its findings to the JIC (for subsequent publication)". (ToR 4.2, 2).

In accordance with the ToR Chap. 7.1, the audit procedures included in the Inception report consisted in the following IA's **Quality Management System (QMS)** documentation:

- The IA Quality Manual;
- The IA Procedures Manual;
- The IA Ethics and Independence Procedure Manual; as well as;
- All necessary related forms, templates and checklists; and
- The Procedures for complaints management.

Note: The IA's initial QMS documentation has been undergoing a revision after being tested through implementation of Audits 1, 2 & 3. Procedures for the management of complaints were submitted to the IAWG for comments and will be added to the QMS. Following internal validation, the revised and compiled system will be resubmitted to the JIC for approval before it can be implemented.

As anticipated in the Contractor's Organization and Methodology (O&M, 2.3.3.2), the **content of the audit reports** includes:

- A description of the main **checks** carried out by the auditor; and
- The key **findings** (with documents and evidence attached in annex, where necessary);
- **Conclusions** in relation to weaknesses and gaps observed in the LAS; and
- **Recommendations** to improve the system; plus;
- The auditor's environment, report on complaints, monitoring of the developments in the findings over time, and implementation of the corrective measures; and
- A summary.

While reports on complaints are to be included in the IA's six-monthly progress reports, covering both complaints about the operation of the FLEGT licensing scheme and complaints relating to the working of the IA (ToR, 4.3.2), "Stakeholders and parties that register a complaint or request an impromptu audit of certain aspects of the LAS" are among the **Sources of information** to be used by the IA during audits. (ToR 4.2). A new section titled 'New issues from **reports or complaints** made known to the IA' was therefore created - after 6.1 to 6.4 in Chapter 6 (Audit evidence and findings) - in the Audit 3 report.

In terms of the **scope of work**, the Independent audit being the 5th component of the LAS, it is "meant to periodically check (the performance and efficiency of) the four other elements of the LAS", with some flexibility "to adapt its audits to an evolving system". (ToR, 4.1.1).

Also, "the scope of the consecutive audits should be based on the **results of the previous audits and observed risks**, to optimize the use of resources" (ToR 4.2, 2). While "previous audits" did not exist for the first audit, "observed risks" were however taken into account in the methodology (See Audit 1 report, 3.1, risk-based approach). The "results of the previous audits" (Audits 1 to 3) were followed on from, in Audit 4, and the "observed risks" reassessed.

Pursuant to the 'Audit systems' described in the ToR (4.2, 2), the IA made sure, "in documenting audit evidence, diagnosing failures and infractions in any part of the LAS, and following up corrective action taken", to use the following **processes**:

(a) … Record all **audit evidence** (performance or non-performance, compliance or non-compliance) [In appropriate audit program records, and as recalled in the audit findings];

(b) …Sample assess … detected **non-performance, non-compliance** (…) and **action taken** (…) [In audit implementation];

(c) Record … system-related **weaknesses**, gaps and areas requiring improvement, … ensure that each is appropriately distinguished from the others [In the audit findings, and as recorded in the IA 'Progress and Risks & Issues Tracking' Database, with a ref. ID for each];

(d) … Assess the **effectiveness of corrective measures** implemented …;

(f) Assess **progress** against recommendations from the previous audits and **efficiency of remedial actions** taken by the JIC [In audit implementation]; and

(e) Assess the **functioning and adequacy of tools and technology** developed or used as part of the LAS [In audit implementation].

The 'Guidelines for the Independent Audit Working Group' (October 2018) usefully recalled:

"The IA will frame its work under [**evaluation**] **questions** such as:

(i) Is the TLAS, as designed and implemented, compliant with the VPA?

(ii) Are procedures and tools in place to govern and guide the TLAS operations?

(iii) Is there sufficient capacity to operate the TLAS appropriately?

(iv) Is the TLAS functioning effectively and as intended?"

4.2 Background to audit preparation

Preparation of the audits is based on the audit methodology, procedures, program and schedule that were submitted within the IA's **Inception report** (08/08/2017).

Preparation of **Audit 4** carried out in September/ October 2019 also reused relevant background material, from the last previous reports:

- The **Audit 3 Report**, 'Preliminary planning of Audit 3 work' (Chap. 4.3);
- The **Fourth Six-monthly Report** that covered the period from October 1, 2018 to March 31, 2019, in 'Planned work for the next 6 months' (Chap. 3.5); and
- The **Fifth Six-monthly Report** that covers the period from April 1 to September 30, 2019;

It also draws from experience and feedback received by the IA from key VPA partners and stakeholders following implementation and reporting of the previous audits. The FDA comments on the Audit Report 2 and the IA's responses, and all FDA/IAWG comments on the Audit 3 Report and for Audit 4 have been incorporated or taken into account in this Audit 4 report.

4.3 Preliminary planning of Audit 4 work

4.3.1 Proposed Audit 3 objectives, scope, program and schedule

The following tables provide a synthesis of all considerations from different sections of the previous reports, relating to the building of the overall Independent Audit 4 program. Details of these elements, definitions of the concepts introduced, and dates are provided further down in this section.

These tables are derived from the ones that were used in the IA's letter to the NAO to inform about audit planning and to request approval in the form of a 'Commencement Order' for the audit.

In the letter, the IA also enclosed for approval the proposed Terms of Reference (ToR) for the Non-key expert 3 (NKE3) to assist the Key Expert 1 (Team Leader) with the planning and implementation of the Independent Audit no. 4. And it

recalled it would in due course request from the FDA an Introduction letter to be issued to the FDA local office, the local government and the Contract Holder for each sampled entity during field audits.

Table 1: Contractual and logistical aspects of the main Audit 4 *(next pages)*

Audit ref. no.	Audit 4
Time period (as per initial schedule)	Late 2019
Tentative dates (beginning – end)	October 1 to December 31, 2019 / January 31, 2020
General objective	Independent assessment of the effectiveness of the Legality Assurance System (LAS) being implemented in Liberia, according to the particular audit scope (below)
Specific objective:	Establish whether all the main structures and mechanisms of the LAS are in place and operational, or ready to become operational in due course to support FLEGT Licensing of exports, to inform the continuation of the IA process. The audit objective will be informed by the results of the last three audits.
Risks and assumptions	The parties, GoL and EU, remain committed to the VPA, to the related implementation schedule, and to the Independent audit. VPA commitments are not undermined by legislative and institutional framework and financial constraints. External VPA support service providers and VPA Facilitation are in place. Risks associated with audit scheduling and planning: -timely mission order issued by NAO, in line with IA team experts' availability (NKE3 in particular a key resource); --availability of auditees on short notice. Implementation: availability of forest, vessel loading (port) and container loading (forest, logyard, port) operations for audits, during the audit timeframe (end of rainy season).
Preparation phase (desk)	February, then October 2019 (due to the postponement of Audit 4)
Implementation phase (desk/field work) in Liberia	Oct./ Nov. 2019
Reporting phase (preliminary audit reports submitted to the JIC within 4 weeks after each audit)	Nov. 2019/ Jan. 2020
JIC's prior explicit approval of the IA methodology, procedures & initial audit program and schedule, as per the Inception Report (IR)	Despite official approval of the, the IA is herewith seeking JIC approval of the proposed program and methodology through the NAO in advance of the audit
Team Leader (TL) mission in Liberia	Oct./Nov. 2019 (tentatively from Monday 21/10 to Friday 08/11)
Schedule of activities	▪ All activities of Component 2 (Operational phase - Implementation of the audit program) ▪ IA Team wishes to meet with the members of the JIC's IAWG (subject to invitation) to present the last audit (A3) report and results and the Audit 4 program and schedule and any initial findings

Activities possibly linked with TL mission in Liberia	▪ Attend JIC meeting as Observer and to present an update on the IA: no known coincidence this time with any normal JIC or Technical JIC meeting ▪ Attend NMSMC meeting (every last Tuesday of the month): TBC* ▪ Hold a stakeholder communication (information and consultation) workshop on the IA in Monrovia on: Audit 3 work and summary of findings (subject to JIC approval of Audit 3 Report, and to IAWG agreement in case the report(s) have not yet been circulated); A4 work program
Public holidays in Liberia	Thursday 07 November (Thanksgiving)
Season (weather and terrain conditions)	End of rainy season => access to remote field sites may be compromised; meetings in Monrovia, assessment of COCS to prevail (as deskwork, with remote access to COCIS) upon field work during Audits 1, 3, 4 and 5 Scheduling of Audit 5 during dry season providing better opportunity to access remote ports and forest concessions to be discussed
Scope – Main areas of evaluation (focus)	▪ Implementation of the role and capacity of relevant gov't bodies to fulfill their Level 2/3 checking responsibilities as defined in the LM, with their work prevailing on operators' compliance ▪ CoCIS (incl. up-/ downward traceability tests) ▪ In line with the Specific objective, focus on high risks, particularly on those components of the LAS related to the export permit process and the risks and opportunities for GoL agencies for the eventual issuance of FLEGT licenses. ▪ Resume the work from where Audit 3 stopped ▪ Clarify previously reported issues ▪ Prioritize pending IA actions ▪ Identify/Recommend a checklist for each dept. ▪ Libertrace functionality reflecting comprehensive coverage of LAS Legality/ Traceability/ Fiscality requirements ▪ Private operators' forest, log yard and port operations; loading of containers and loading of vessels ▪ Stakeholder consultations ▪ Concession reviews
Scope - Phasing in new timber sources among all timber sources covered by the VPA (listed in VPA Annex II), and/or by the LAS (subject to development and enforcement of related regulations)	▪ FMCs ▪ TSCs ▪ PUPs: n/a (cancelled) ▪ CFMAs ▪ Timber from artisanal logging; Timber from plantation; Timber from agricultural and mining concessions (conversion): if regulation developed and enforced
Scope - Phasing in LAS coverage of timber products	▪ Timber products based on Annex I of the VPA: logs and sawn timber (bundled, individual lumber pieces) ▪ Attention given to containerized exports

Scope - Phasing in LAS coverage of market destinations	▪ All exported timber, from all timber sources (Annex II) and timber products (Annex I) covered by the VPA, that it follows the VPA requirements, subject to development and enforcement of related regulations ▪ Timber intended for the domestic market (esp. from artisanal logging) and not currently verified for legality, that it is indeed not being exported ▪ Products sold on the domestic market: expected to be phased-in within two years after Licensing has become operational (now by 2020/21)
Scope - Sampling among the four other LAS elements and sub-components	Assessment of effectiveness and performance of ▪ Legality definition: Yes; ▪ Verification of compliance with the legality definition: Yes; ▪ Chain of custody system [COCS]: Yes ▪ FLEGT licensing, LLD: No (n/a)
Scope - Sampling of (LAS implementing or subjected) **entities / sites as potential auditees for field audits**	TBC* among ▪ LAS implementing entities in Monrovia ▪ Forest Management Advisory Committee (FMAC) ▪ FDA Management and Depts.: LVD (data management in COCIS, CoC inspections, legality audits), Commercial Forestry Dept., Community Forestry Dept., LED, PAD ▪ FDA projects: LFSP ▪ Other government bodies: EPA, MOL, LRA ▪ Key LAS implementation stakeholders in Monrovia: EFI, EUD, FDA, FLEGT Facilitation, LTA, NAO, SGS Liberia, VPA Secretariat, VPASU ▪ Forest contracts: TSCs ▪ Port operations: Monrovia, Buchanan, Harper ▪ Other stakeholders: private sector ops/LTA, civil society (NGO Coalition), NBSTB, NUCFDC Final sampling: based on 1) new scope and 2) pending IA actions from the first three audits (as prepared in advance) Reminder of Audits 1 to 3 sampling: 1 FMC, 1 CFMA (both forest and log yard operations)
Scope - Surveillance activities	Follow-up from previously reported risks and issues, through tracking of issues and monitoring of developments (including JIC work); including: ▪ Review of corrective actions implemented by GoL (as per IAWG Final Matrix, by A3R Main C&Rs) for follow-up during Audit 4
Audit criteria: reference against which the verification is carried out (laws, procedures, legality matrices, etc.)	▪ VPA Annex II incl. App. A, 2 Legality Matrix (and into Appendix B) ▪ LVD SOPs ▪ Others

Limits of the field audits (locations, sectors, units, activities, sites or processes of auditees, and duration of audit)	Field audits include field, office & system audits. Individual audits conducted in accordance with ISO 19011, including formal opening and closing meetings with the auditee. Limits: TBC*
Audit Report	The audit report will provide a complete, accurate, concise and clear record of the audit pursuant to ISO 17021-1 standards and include the following: ▪ Audit objectives ▪ Audit scope particularly identification of the organization (the GoL institutions in the VPA) and the function of the process to be audited ▪ Identification of the audit team and the GoL institutions' staff that participated in the audit ▪ Dates and locations of the audit activities ▪ Audit criteria ▪ Audit findings and related evidence ▪ Audit conclusions ▪ A statement to the degree to which the audit criteria have been fulfilled ▪ Any unresolved diverging opinions between the audit team and GoL institutions ▪ Rationale behind the sampling approach taken (representativeness) The IA will keep increasing the referencing of analyses and issues to the structure and specific requirements of the VPA/Legality Matrix
Responsibilities (audit team)	▪ Key expert 1 (KE1-TL) ▪ Key expert 2, Legal expert (KE2) ▪ Senior Non-key expert, Field audit team leader (NKE3) ▪ Other members of the audit team: N/A
Working days (WDs) – tentative number of WDs over the indicated period, as per the revised work plans annexed to the Inception report and to the 1st to 5th Six-monthly Progress reports -**, in and out of Monrovia**	▪ **KE1-TL:** □ 47.5 WDs in total □ TL mission to Liberia: up to 3 calendar weeks (16 WDs from October 21st to November 8th, excluding 1 public holiday); ▪ **KE2:** 9 WDs in Liberia (resident); ▪ **NKE3:** 18 WDs (as per NKE3 ToR submitted), including 13 WDs in Liberia (October 23rd to November 7th), excluding 1 public holiday, and 5 WDs outside of Liberia for audit planning, data analysis and report writing; ▪ **Other (Senior, Junior) NKE:** n/a. Reminder: a local forestry technician may be appreciated to assist the audit team in gaining evidence in the field during the field audits, by contributing local knowledge (for Audit 2, an Observer from a support project fulfilled this role). ▪ **IAWG can send observers:** at their own cost, if approved by the IA and have signed the Observer Conditions (FORM 08) of the IA QMS prior to the assessment (in addition to the FDA person)

* This will be planned during the audit preparation phase that precedes the TL mission in Liberia

Table 2: Methodological aspects of the main Audit *(next pages)*

Methodology (assessment tools):

Audit 4 will reuse the combined types of activities that were initiated during the previous audits:

- **Baseline review** of the implementation of relevant operative frameworks relative to the LAS in Liberia (state of play assessment, against requirements in VPA and subsequent plans);
- **Field audits** of the effectiveness of the LAS on the ground; and
- **Review of the current issuance of the Export permit**, a process that concentrates current legality verification and prefigures the future issuance of 'FLEGT Licenses'.

The **Baseline review** entails both (i) desk research into documents and systems (CoCIS) and (ii) interaction with relevant entities and stakeholders based in Monrovia (information gathering through information requests and meetings). It will therefore include both remote deskwork and a fact-finding mission in Liberia. Face-to-face meetings with key LAS implementing partners will be favored, as well as meetings with key stakeholders and, if possible, a stakeholder workshop.
This will continue during Audit 4, reviewing further VPA requirements and assessing their implementation, particularly into Annex II that describes the LAS in detail; the COCIS (LiberTrace) is also being evaluated in greater detail, especially with regard to its traceability and legality functionalities, incl. upward/ downward traceability tests.

Office, system and field audits, compliant with ISO procedures, will be focused on (i) government control of COCIS implementation (data management, private operators' paperwork), and (ii) government verification of operators' compliance with legal requirements (using the two checklists derived from the VPA Legality matrix (LVD SD 01) and the Liberian Code of Forest Harvesting Practices (CFHP)). The requirements are sampled with a focus on the high-risk rated activities of private operators, on the basis of an updated risk analysis.

The **Review of the current issuance of Export permits** (EPs) will go deeper into the enforcement of all relevant legal requirements "from forest to port". A clear distinction will be made between the requirements that are currently applicable to EPs under the "Current regime" and those that are due to apply to the future FLEGT Licenses. It will include EP issuance tests in LiberTrace, using the checklist developed during Audit 2.

Follow-up from Audits 1 to 3: risks and issues registered during Audits 1 to 3 will be followed upon as a matter of priority. The objective will be to (i) clarify issues already raised, where needed to complete the Independent Auditor's understanding and assessment, (ii) explore issues that were left for future attention, and (iii) monitor any measures implemented since the previous audit or from complaints.

New issues from reports or complaints made known to the IA will be reviewed.

Two audit stages/ levels:

- Baseline review (Audit Stage 1, or "system-based" audit)
- Field audits (Audit Stage 2, or "performance-based" audit)

"Top-down" vs. "Bottom-up" (risk-based) approach:

- Top-down approach still present until VPA requirements and subsequent plans have been covered
- Bottom-up (risk-based) approach increasing throughout Audits 2 to 5
- Both approaches to converge at some point

Risk-based approach (associated with +/- guided checks) **vs. random checks** through sampling among Principles, Indicators & Verifiers of the Legality matrix:

- Continued prevalence of risk-based checks, upon random checks
- Risk analysis developed in the Inception report, based on the LVD SD 01 and CFHP auditing checklists for the field assessments

Risk-based scope: TBC*
Random checks: TBC*

Flexible approach to sampling, between:
1) Comprehensive approach relevant to Stage 1 (see Audit reports), increasingly present throughout Audits 3 to 5**; vs.**
2) Selective approach relevant to Stage 2 (see Audit reports)
The objective is to have covered the full scope of the LAS by the end of the Contract, or before the system becomes fully operational, whichever comes first.

Use of two different assessment tools:
1) Formal information requests used while preparing and conducting audits and in the Baseline review, **vs.**
2) Formal "ISO-compliant" audits used for field and office audits

Reporting structure
The Audit 4 report would normally reuse the same following structure of the previous Audit 3 report as follows:

1 EXECUTIVE SUMMARY AND GENERAL CONCLUSION
1.1 Executive Summary
1.2 General conclusion from Audit 4
1.3 Previous key recommendations from Audits 1 to 3, combined
1.4 Reminder of Audits 1 to 3 focus and results
2 CONTRACTUAL FRAMEWORK FOR THIS AUDIT REPORT
3 MAIN CONCLUSIONS AND RECOMMENDATIONS FROM AUDIT 4
4 AUDIT PREPARATION
4.1 Relevant references in the IA's Terms of Reference
4.2 Background to audit preparation
4.3 Preliminary planning of Audit 4 work
4.4 Obtaining the necessary approvals
4.5 Preparation of the 'follow-up on previously reported issues
4.6 Preparation of Audit 4 field audits
5 AUDIT IMPLEMENTATION
5.1 Baseline review of VPA requirements
5.2 Follow-up on previously reported issues
5.3 Field audits
5.4 Review of the current issuance of Export permits
6 AUDIT EVIDENCE AND FINDINGS, CONCLUSIONS, FURTHER IA ACTION, AND RECOMMENDATIONS TO THE JIC
6.1 Baseline review of VPA requirements and state of implementation
6.2 Field audits
6.3 Review of the current issuance of Export permits
6.4 Follow-up on previously reported issues
6.5 New issues from reports or complaints sent to the IA
6.6 Progress, risks & issues tracking' Database [IA Progress DB]
7 APPENDIX (ANNEXES)

The annexes, presented in a separate document, included among others copies of critical tools developed by the IA:

- Baseline review of relevant VPA requirements and state of implementation
- Assessment of VPA requirements
- IA Progress DB

191021, IAWG meeting: Make Appendix I = supplementary information to the main audit (A4) report; and Appendix II = Reminders from previous audits, including old R&Cs not updated (they really want FDA to work separately on previously reported, filed issues), while keeping only new R&Cs in the new report. Plus the IA Progress DB will keep them all in.

However, upon IAWG's request, the IA will consider presenting some sections from the report structure in a separate document:

- General conclusions from Audit 4 (1.2 - This is a key part of the report which the IA considers should stay in the main report)
- Key recommendations from Audits 1 to 3 combined (1.3)
- Reminder of Audit 1 to 3 focus results (1.4)
- Contractual framework for this audit (2)
- Relevant reference in IA terms of reference (4.1)
- Background preparations (4.2)
- Preliminary planning of Audit 4 work (4.3)
- Obtaining necessary approval (4.4)
- Preparations and follow up… (4.5, 4.6) (i.e. apparently the entire Section 4. AUDIT PREPARATION)

Baseline review of VPA text (5.1)

* This will be planned during the audit preparation phase that precedes the TL mission in Liberia

The actual time spent conducting the different phases of the audits is limited by the number of working days allocated to the experts as per the Contract budget during these periods, particularly to the IA Key expert 1, Team leader (KE1-TL).

4.3.2 Guiding principles

Planned work during Preparation phase of Audit 4 (adapted from IR, 2.4.2.2)

Confirmation of Audit program to indicate: as per the above synthesis table.

Follow-up from previous audit(s) and from complaints, in advance of the subsequent audit, as per O&M, Schedule of activities, Task A2.1: same.

Updating of risk profile to support the risk-based audit approach: this became relevant from Audit no.2.

Identification and mobilization of additional resources:

- Identification and mobilization of non-key experts (NKEs), in particular for the implementation of audit missions (FSC auditor for example, if needed) – Need to allow sufficient time for NKE recruitment process (ending with the approval of ToR and selection of candidates) in advance of the forthcoming audit;
- Confirmation of the number and composition of audit teams (incl. TL or not, one or two other qualified [FSC/other] lead auditor(s), guide, driver; etc.);
- Organization of FDA assistance;
- Clarification of expected involvement from the KE2.

Implementation of the IA QMS documentation:

- Review of, and adherence to the IA procedures in terms of planning, execution and reporting;
- All procedures in the QMS documentation are to be formally approved before distribution of "Version 1" documents (Inception report 4.2.2, on initial adoption and continuous improvement of the IA QMS), meaning 'Checked' and initially 'Approved' respectively by the IA Team Leader and Project Director, and finally by the JIC.

Tools to be developed or prepared in advance of each audit mission (Activity 2.2):

- Detailed checklists;

- The 'Audit Checklist and Report', Ref. SD 01-01, FDA, Version 2 of 23.10.2015, developed by SGS for the LVD and other MACs involved, and available as further adapted by the IA to highlight high-risk issues;
- The 'Inspection Checklist and Report for LCFHP' (FDA, 22/04/2017, V1.0), the Liberian Code of Forest Harvesting Practices (CFHP) made into a checklist, also available as also adapted by the IA as a risk-based tool; and
- Checklists of the checks that respective government bodies are due to perform according to the VPA Legality Matrix (subject to availability as part of LAS documentation);
- Other materials printed for the auditors to take to the field, which has included:
  - Code of Forest Harvesting Practices (2nd edition 31 May 2017);
  - Manual of Procedures for LVD staffs (July 2016, SGS, Project ref. PO 6380) - Last update to be used in the next audit;
  - Manual of Procedures for Forestry Operators (July 2016, SGS, Project ref. PO 6380) - Last update to be used in the next audit;
  - Guidelines for Forest Management Planning in Liberia (FDA, July 2009, FRM).

'Plan and prepare for the forthcoming audit (as anticipated in previous audit report)', as per O&M, Schedule of activities, Activity A2.2 [2.1]: this is what was described in the Second Six-monthly progress report, what is being done here, and what will also result from the follow-up on results and "notes for further IA action" from the Audit 1 report.

Planned work during Implementation phase (IR, 2.4.2.3)

Audit in two stages:

- **Stage 1**, whose objective is to audit the documentation of the LAS, review the state of the system, and collect information concerning the perimeter of the LAS and its processes and sites.

  In other terms, Stage 1 consists of a preliminary, sound baseline review of the institutional and all other relevant frameworks in place (state of play assessment, *against VPA requirements and subsequent plans*) in order to inform the continuation of the IA process. This entails both documentary review (desk research) and interaction with the representatives of relevant entities in Monrovia.

  Comments received from key VPA partners on the Audit 1 report served to provide the following clarifications:

  - The Baseline review implies looking at how each component of the LAS is established, which includes how it is designed to operate, before examining its real material and human existence, its activity and eventually its performance: the IA first needs (i) to describe in which processes they participate, and their operational procedures, due outputs, and systems and tools (which is unlikely to be described in VPA annexes; most has been developed by support service providers - SGS and VPASU - afterwards); then to (ii) assess their framework (like the SD01 and CFHP checklists: are they appropriate tools? whether a box with a tick really means Ok, whether

any issue will be picked up; same with LiberTrace[20]); then (iii) the means (human and material resources) they are supposed to have (or estimate they should have) to operate (including documentation and training).

- The necessary resource for the IA should be new checklists of what checks the different entities should be doing (such inspection, at such stage, where, when, how, at which sampling rate, such and such report issued, to whom etc.) and of the specific means they should be equipped with to do it. These checklists for the different FDA departments and other relevant MACs have not yet been made available (See related issues raised).
- As from Audit 4, the IA has also been willing to consider the Forward Planner[21] as a relevant source of information on current issues, on what the stakeholders are currently aware of, concerned with, and busy addressing. The IA intends to do a more systematic use of it, along with the JIC's aide memoires, recording the issues raised (action points), per section in the VPA relevant to the IA scope, and referring (possibly in the IA Progress DB) to the follow-up work in it (corrective actions, assignment, timeframe) in relation to its own monitoring activities. Also, the color-coding reflecting the level of implementation (Red, Orange, Green) may assist the IA in identifying and rating risks, and focusing on high-risk non-compliance parts of the checklist.
  The IA initially felt that the Forward Planner should not interfere with its own investigations, that it should not distract the IA with the level of detail it contains, and that it should not change or add to the role of the IA as a monitor of VPA implementation progress through the Forward Planner.
  Initial feedback: However, the IA finds the FP difficult to interpret and will need to be guided through it by knowledgeable FDA, FLEGT Facilitation, EFI or VPASU persons.
  On who would be best placed to provide such guidance to better understand the Forward Planner, an EFI Officer kindly offered to be the IA's contact person on this for now, until the VPA projects start again, while the VPA Secretariat being responsible for the Forward Planner should also be involved in the discussion. (EFI, 05.02.2019, 24.04.2019)
  At some point, however, the Forward Planner was considered by some stakeholder to be "not so efficient" as a tool, due to the impossible challenge of appropriately serving both technical and political levels with the same level of detail (too general for the technicians, vs. too detailed for the politicians) and the difficult link from one level to the other.
  Further question: Are the two different (long, vs. summary) versions addressing this difficulty?

- **Stage 2** whose purpose is to evaluate the implementation and efficiency (performance) of the system's management arrangements.

Note 1: The Baseline review, as part this Audit, relates to 'Desk work' that:

- Is part of 'Stage 1' auditing; and
- Uses the 'Top-down approach';

[20] LIBERTRACE is the name of the COCIS (Chain-of-Custody Information System) software package supplied by SGS for Liberia based on SGS's "LegalTrace" generic platform.
[21] The so-called mechanism and tool that has been adopted at the 2nd JIC, for "the Parties, working through the JIC, to evaluate the progress of implementation with reference to the schedule set out in Annex VII" as per Art. 14.2 of the VPA now used as the VPA implementation monitoring and planning tool in Liberia, adopted by the JIC and accepted by the VPA Stakeholders.

- Does so in a systematic manner (contrary to risk-based guided checks or random checks); and
- Therefore ignores any 'sampling' and 'surveillance activities'; but
- Uses 'formal information requests' (vs. 'formal "ISO-compliant" audits') as the main assessment tool.

Being part of 'Stage 1' auditing, the Baseline review is mostly an initial "system-based" type of assessment (whether systems are in place), as opposed to a "performance-based" assessment (whether the systems in place are operating efficiently and consistently). Some performance issues may however be raised in the process.

Lessons to be learned from previous audit implementation include that, for the Baseline review, information requests and consultations conducted by email would be better followed upon through face-to-face meetings in Monrovia during the next audit.

Note 2: Field audits in general are mostly a "performance-based" type of assessment of the efficiency of the LAS (whether the LAS is in place is operating efficiently and consistently) through performance criteria (i.e. looking for results).

The field audits (in fact 'Office, System and Field audits') relate to 'Auditing work', conducting assessment of compliance in Liberia (both Monrovia offices and field) or through the online Chain-of-Custody Information System (COCIS), that:

- Is part of 'Stage 2' auditing;
- Uses the 'Bottom-up (risk-based) approach';
- Uses both risk-based guided checks, into forest law compliance & enforcement, and random checks;
- Is 'selective' (each audit focuses on particular components of the LAS) rather than 'comprehensive';
- Uses both 'formal "ISO-compliant" audits' (as per the IA QMS) and 'formal information requests' as assessment tools;
- Takes into account the climate and terrain conditions at the envisaged dates[22]; and
- Samples the assessment of effectiveness and performance of the Chain of custody system [COCS] and of the Verification of compliance with the VPA Legality definition, among the other LAS elements, and among entities/ sites.

The comments received to the Audit 1 report also served to apply some inflections to the Independent Audit methodology thus far, as follows:

- The final step would be to look at how each component performs. Once it understands what the different entities (MACs) should be doing and how, the next crucial thing that is expected from the IA is to assess whether they are doing their job properly and efficiently, using the checklist(s), yes or no, and if not why. This will now have to be the main objective and justification for conducting formal field and office audits of these government bodies, both in their offices (Monrovia, Regions, etc.) and in the field (concessions, mills, checkpoints, log yards, ports etc.): How are they organized? What have they checked? Have they applied their procedures?

[22] October usually corresponds to the end of the rainy season, whereby the assessment of the COC system will therefore prevail (as deskwork, with remote access to COCIS) upon field work; March is the opposite (dry season; a more active forest and export trade sector, and opportunities to reach remote places.

- It was therefore decided for future audits to focus more on assessing government departments, looking at what institutional and operational arrangements Liberia has implemented vs. the VPA commitments.
- Auditing the field operations of private forestry operators would now mostly, if not only, serve to assess the quality of the government checks based on their reports, where these exist: Is what they have checked Ok really Ok? Etc. It was felt that the IA would not add much more value by just "going again to the field only to see that there is a lot of noncompliance (which FDA are not picking up because there is no fuel for the car etc.)" as it was commented.
- A discussion however resurfaced during Audit 3, whether audits of *private sector operators* are also justified as part of assessing the overall efficiency of LAS implementation (See 6.1.7.3 Verification and licensing framework)
- These audits of the responsible government bodies and, only marginally or indirectly now, of the field operations of private companies, affected the itinerary audit for the Audits 2 and 3. The IA Audit TL needed to be more in Monrovia and in the Regional offices for the Audits 2 & 3 than in the FMC/TSC/CFMA areas as initially envisaged.

  Paragraph 4.1 of Annex 5 of the VPA stated that, "in the first year of operation of the FLEGT Licensing scheme [or if the IA is put in place before, as is the case], the IA shall conduct two audits. The first audit shall aim to establish that all the main structures of the LAS are in place and ready to be put into full operation [i.e. Stage 1]. The second audit, and all other future audits, shall assess or evaluate the performance of the LAS [i.e. Stage 2]".

  In reality:
  - Only one audit (Audit 1) took place in the first year, because of the Inception phase;
  - Stage 1 and Stage 2 auditing methods are still being combined in all first main audits so far.

"Top-down" vs. "Bottom-up" approach:

"Top-down" approach: starting from the big building blocks of the [VPA, as relevant, and] LAS (institutional, technical and procedural arrangements as per the VPA Annex II), and assessing the effectiveness of their implementation (i.e. what should be in place, is it in place, is it adequately funded, staffed, managed etc. (operative means), is it functioning and active, what evidence of this?), gradually looking more in-depth into more detailed arrangements in lower levels of the LAS' overall construction) [i.e. applying to Stage 1] and more into the assessment of performance and efficiency [i.e. applying to Stage 2];

"Bottom-up (risk-based)" approach: based on the sampling of "high risks" among those identified in the risk analysis of the Legality matrix checklist (See Inception Report (IR) 3.7.3, Risks and issues associated with forest law compliance & enforcement), reflecting the reality in the field operations and their possible implications for legal / sustainable forest management, gradually looking up more and more into the underlying causes of issues from previous audits.

Flexible approach to sampling between:

- **Comprehensive approach:** All the components of the LAS are systematically assessed during each audit. Due to the complexity of the LAS, though, it is clear that it will not be possible to look at "everything" during each audit;

- **Selective approach:** Each audit focuses on a particular component of the LAS, with the accepted risk of "losing sight" of other key components being mitigated by the follow-up from previous audit reports.

Use of two different assessment tools:

- **Formal information requests:** sent to LAS implementing entities (or other stakeholders as auditees) for the purpose of gathering and validating background information or for verifying or completing or clarifying information collected through documentary review and while preparing and conducting audits;
- **Formal "ISO-compliant" audits:** as per the IA QMS.

  The comments received from key VPA partners on the Audit 1 report also served to provide the following clarifications regarding "**feedback to auditees**": While it has been found appropriate that the IA submits its reports to "the JIC" through the NAO, and not to the auditees (contrary to normal audits, with corrective action requests sent to the auditees), there is realization that the auditees may not get an appropriate "response right" to the IA findings, interpretations or conclusions before the report is eventually published. The TL clarified that "normal audits" conducted by the IA do include a closure meeting during which the findings are shared with the auditees; by comparison, it is fair to ensure that information and clarification requests through face-to-face meetings or by emails or calls (and possibly also system checks, documentary studies, others...) also include a final debrief ("this is what we have noted, what we understand, what we conclude").

Surveillance activities may include:

- Random checks into the management system (with findings generating increased surveillance/ follow-up activity as per the next points);
- IA monitoring and issue tracking activity (using the IA "Progress DB");
- Monitoring and evaluation of the level of application and efficiency of the corrective measures (modifications/ corrections) adopted by the JIC as a response to the identification of weaknesses observed by previous audits or revealed by complaints

  * Like with the follow-up on Corrective Action Requests (CARs) raised in e.g. FSC certification audit/s, with CARs raised in previous audit revisited for close out – however these CARs are issued to the auditees whereas the IA only reports to the JIC.
- Updating risk profile and rating (See IR 3.7.3, previous page and below) to support the risk-based audit approach applied by the IA.

<u>Relevant extracts from the Inception report, Chap. 4.4 'Methodological note from a forestry auditing standpoint' (2.4.3.4)</u>

The IA applies a risk-based audit approach. An updated risk profile is required prior to each audit.

To ensure that the (field) audits of the IA are conducted in a credible, transparent and consistent manner, a set of audit procedures is required. These are contained in the ISO 9001-compliant QMS that has been developed as part of the Contract. The IA procedures will allow for the successful scheduling, planning, conducting and reporting on the 5 audits that are scheduled over the contract period.

Essentially the Audit process covers the following steps:

- For each different entity that is visited an opening meeting will precede the audit to explain the audit protocol, scope and itinerary to the auditee;
- After the opening meeting the audit team will normally commence with document review – based on the risk assessment results - as this gives insight into the flow of field work planned, ongoing and completed. This will then allow for good sampling of the field operations of the particular auditee;
- Field assessments will then follow, which form the core of compliance assessment. They will follow the results of the risk-based approach;
- The IA Audit Team leader will convene team meetings during and after the audit, review all non-conformities (NCs), and write up the NCs that have been identified as valid, in preparation for the closing meeting;
- All NCs shall be presented to, and discussed with the auditee onsite in all circumstances before the audit team leaves the site (closing meeting). NCs will indicate the responsible body for the particular requirement in the Legality matrix, as part of the NC evidence. The auditee will have the right to appeal any NCs that he/she does not agree with;
- The IA will then prepare a full report for the JIC, who will have the responsibility to further follow up on the closure of the NCs raised during the IA audits.

The process in planning audits requires cognizance of the following:

- Follow the IA procedures in terms of planning, execution and reporting;
- Consider elements of the LAS that are not yet implemented at the time of a particular audit;
- All audits will include stakeholder consultation, and stakeholder feedback will be included in the audit plan for follow up;
- After the first audit of a particular entity or stakeholder group, subsequent audits will always include follow up on NCs raised in previous audit/s.

Finally, since the Audit 2, all audit programs include 'Follow-up from (the previous) audit'.

4.4 Obtaining the necessary approvals

4.4.1 Initial approval of the Independent audit methodology, program and schedule

According to the ToR (4.2, 7.2): "*The Inception Report and its annexes need to be reviewed and approved by the JIC* before any audit can take place"*; and "*An explicit approval of these documents is needed, especially for the Manual of procedures for the audits and the audit schedule*".

* "*The Project Manager [NAO] is responsible for approving the report*"; but "*The JIC needs to be involved in commenting and approving that report*".

Having submitted a first draft Inception report (IR) on August 11, 2017, in which the audit methodology, program and schedule were provided, on November 25, 2017 the Contractor finally received from the NAO the notice of formal '**Approval of Inception Report'** (Written acceptance for the IR, deemed to be approved following the expiration of the 45 days needed for comments or rejection, pursuant to Art. 27.5 of the Special Conditions).

4.4.2 Information on the forthcoming audit schedule, Commencement Order for Audit 4 and approval of NKE ToR and CVs

For a number of reasons that the IA has detailed in its 5th Six-monthly Progress report, the Audit 4 initially scheduled in March 2019 was delayed by several months.

On October 18th, 2019, the IA formally confirmed to the NAO its intention to carry out its fourth Audit ("Audit 4") before the end of the year (2019), out of the five main audits that are due over the life span of our Contract.

1) The letter was the IA's official 'Request for a Commencement Order for the Audit 4 mission in Liberia' (due to start on October 21, 2019).

In support of the request, the IA provided information about the 'Proposed program of activities and schedule' and 'Methodological aspects' for the audit (See 4.3).

2) The letter included a 'Tentative detailed schedule for Audit 4 mission in Liberia' that had been discussed over a teleconference with the IAWG on 16.10.2019 and consequently updated and revised. It showed the planned activities during eligible working days (WDs).

3) The letter also included the submission, for approval, of updated Terms of Reference (ToR) for the Non-key expert 3 (NKE3) to assist the IA Team Leader with the planning and implementation of the Independent Audit no. 4. The same candidate was proposed as a logical continuation from the first inception and audit missions.

4) The letter finally recalled the need for the IA to be issued by the FDA an Introduction letter that the IA will be able to use for facilitation when requesting meetings and collaboration in field audits.

On October 21st, the TL received the NAO's formal '**Commencement Order for Audit 4**', together with the '**Approval of the NKE3 ToR'** and CV (Mr. Michal Brink). The IA Team Leader and the NKE3 were thus allowed to travel to Liberia for the Audit 4 mission.

4.5 Preparation of the 'follow-up on previously reported issues'

4.5.1 Overall approach

The 'follow-up on previously reported issues' has been an added activity, following implementation of the Audit 1. It involves the following chapters in this audit report.

- This Chap. 4 (**Audit preparation**) recalls background requirements, provides a methodology, and indicates the origin of these "previous issues", in previous audit reports or other documents, and what has been done to register them in other documents like the IA Progress DB;
- Chap. 5 (**Audit implementation**) only just identifies/ lists them up;
- The actual follow-up (further evidence gathered, of new developments of the findings or of corrective measures applied) regarding those previously reported issues is presented in Chap. 6.4 (**Audit evidence** gathered in the course of implementation -from all audit activities including Baseline review of VPA

requirements, Field audits, and Review of the current issuance of Export permits-, and **findings** from comparing evidence with the audit criteria);

- The updated Conclusions & Recommendations regarding these previous issues, as well as any Notes for further IA action, are covered in the same Chap. 6; and
- All the 'MAIN CONCLUSIONS AND RECOMMENDATIONS FROM AUDIT 4' from both previously reported and newly raised issues, are summarized in Chap. 3 (as the new basis for follow-up during the next audit).

4.5.2 Background requirements and guiding principles

As recalled in the Inception Report (IR, 4.3.3): "The scope of the consecutive audits will also be based on the results of the previous audits and observed risks, to optimize the use of resources". *(ToR, 4.2 Specific work, 2 Operational phase: Consecutive audits)*

The above requirement was implemented in the Contractor's Schedule of Activities (SoA) subsequently revised as follows:

- Activity 2.1 '**Follow-up from previous audit(s) and from complaints, in advance of the subsequent audit**', including the following tasks: Document and assess corrective actions implemented upon findings and complaints since previous audit (as per the report on complaints incorporated in the six-monthly progress report); Update the 'Progress, risks & issues tracking' Database [Progress DB];
- Activity 2.2 [2.1] '**Plan and prepare for the forthcoming audits (as anticipated in previous audit report)**', including the task to 'Confirm topical scope of audit';
- Activity 2.7 [2.6] '**Preparation of the audit reports**', including the following tasks: Prepare the preliminary audit report (IA to report on, among others: the evolution of the findings over time; follow-up on complaints received since the previous audit; follow-up on corrective measures implemented since the previous audit); Plan for next audit (anticipate scope, sampling strategy and program for the next audit);
- Activity 3.2 [3.1] 'Monitoring of VPA process and LAS activity'.

The Main conclusions and recommendations in the previous (Audit 3) report (Chap. 3) are followed upon as a matter of priority.

The objectives are to (i) **clarify issues already raised**, where needed, to complete the IA's understanding and assessment, (ii) **explore issues that were left for future attention**, and (iii) **monitor any measures implemented** since the previous audit or from complaints. Continued focus is placed on the capacity of relevant government bodies to fulfill their responsibilities.

Although the emphasis is on the "follow-up" on previously reported issues, "Issues" actually include "**Risks & Issues**". This is because risks are potential future issues and, if anticipated, have a chance to be addressed and mitigated before they become real issues. Those risks & issues may or may not reflect the systemic high risks associated with people and processes and to those associated with forest law compliance & enforcement (derived from the Legality Matrix and the Liberia Code of Forest Harvesting Practice), that were identified in the Inception report and in the regularly updated risk analysis.

4.5.3 Methodology

The resulting methodology is based on the following workflow:

Previous findings + information collected since the previous audit (including formal claims through the IA Complaint Management System, monitoring reports in the six-monthly progress reports, and informal reports, and including corrective measures implemented since the previous audit as reported in the Six-monthly progress report), or random checks conducted.

Issues and related developments logged or updated in the IA Progress DB.

Issues (high-risk or high-impact issues first), taken into account in next audit scoping (of *systemic issues* to be investigated) &/or *guided sampling* (as opposed to random[23]).

4.5.4 Sources

Possible sources, for these "previously reported issues" in previous audit reports or other documents:

- **Chap. 3, Main conclusions and recommendations** in the previous (Audit 3) report (A3R), with references provided to A3R Chap. 6.4 (Follow-up on previously reported issues) and Chap. 7 (Conclusions, further IA action, and recommendations to the JIC on new issues);
- **Chap. 6 (Audit evidence and findings)** also in the previous audit report (A3R), for **new issues** detected through the Baseline review (6.1), Field audits (6.2) and Review of the current issuance of Export permits (6.3) during the previous audit (Audit 3);
- The **Report on complaints** and **Monitoring reports** incorporated in the Six-monthly progress reports that covered the period elapsed since the last audit (October 2018) - the Fourth Six-monthly Progress Report covered the period from October 1, 2018 to March 31, 2019, and the Fifth Six-monthly Report covered the period from April 1 to September 30, 2019 -, including any **Report of Corrective measures implemented** since the previous audit;
- The **Forward Planner** that was presented at the last (7th) JIC; and
- Any **new complaints and informal reports** received, and **results of random checks** conducted since the previous audit.

Relevant information for the *follow-up* on these previous issues:

[23] Guided sampling to use the same case, or a different sample - if it is found that the identified risk case is already mitigated through appropriate steps that are in place -, with a view to detecting any new non-conformities from operators and assessing whether the LAS operated efficiently in that case

- **New findings** or **developments of previous findings** collected during the current audit or in between audits in relation to previous issues.

While reviewing these sources, the IA makes sure that all these risks and issues have been registered in the 'Progress, risks & issues tracking' Database [IA Progress DB] as a back-up for further tracking and follow-up.

Note: If the IA could be made comfortable that any new issue or development concerning an existing issue is systematically uploaded into the Progress DB (through a consistently applied routine procedure), then the latter shall be used as a single source for these "previous issues", with details provided in other parts of the reports. This possibility will be assessed over time (it has so far been found that there is not enough time during audit report writing that all the risks and issues raised in the report have been registered as formal Risks or Issues in the database, with an incremental number and a level of priority).

4.6 Preparation of Audit 4 field audits

It is recalled "field audits" actually include all 'Office, System and Field audits'.

The 'Tentative detailed schedule for Audit 4 mission in Liberia' presented in the (Request for a Commencement Order for Audit 4 and approval of the NKE3 ToR' (October 18, 2019) included "Witnessing of vessel loading operation in Monrovia port" and a 5-day field trip.

The details could only be confirmed and planned once the IA Team was gathered in Monrovia, as a necessary compromise between: the initial audit program, the active sites and operations actually taking place, time constraints, and the weather and road conditions for driving, or the availability of internal flights, plus the availability of the auditees in some cases.

The IA Team also had to organize the logistics, with the assistance of the IA's Local Partner, the approval of a Mission Order for each IA Expert's mission out of Monrovia, and the signature of the Observer Condition Form (from the IA QMS), and per diems for the Observers.

4.6.1 Office audits

A number of audit meetings took place in the offices of VPA implementation partners or stakeholders in and the area of Monrovia.

4.6.2 System audits

System audits consisted mainly in investigations and tests in the LiberTrace system.

4.6.3 Field audits

Two field visits out of Monrovia would eventually be organized:

- The witnessing of an LVD log container loading inspection in Gbarnga (export logyard of Sing Africa plantations), with two LVD and NAO Observers (a one-day trip, on 28.10.2019);
- A combined field audit visit of several audit sites (Buchanan area): TSC A2 field office, logyard, log landings, and forest; FDA Region 3 Office; and FMC K logyard and office, with three (EFI, LVD, and NAO) Observers (03.11 to 05.11.2019).

5 AUDIT IMPLEMENTATION

5.1 Baseline review of VPA requirements

5.1.1 Tools developed and used for the baseline review

The documents developed as tools and used through the baseline review (top-down approach) have included:

- The previous audit reports, and this report under construction at the preparation stage;
- A separate table titled and representing the **'VPA structure and content'** (in MS Excel format). In that table the full VPA text (body and annexes) is being decomposed into individual requirements that can then be reviewed. Any link between two requirements is noted. The table provides a structure for the IA's work that is as much as possible cross-referenced with the Legality matrix (LM) also provided in the VPA. It is being completed as 'work in progress' through the 5 audits and in-between audits). It is designed for internal use by the IA and is not provided in this report;
- Another separate table titled '**Baseline review of relevant VPA requirements and state of implementation'** (in MS Word format; for the IA's internal use) where the review can be unfolded (also as 'work in progress') according to the above-mentioned structure, with the following elements, for each requirement:
  - VPA requirement (from the VPA text, both body and annexes, and potentially from subsequent implementation plans and commitments),
  - Audit criteria,
  - Investigation in progress,
  - Evidence found (audit findings) and/or reference to the corresponding section in the audit report where it is discussed,
  - Compliance/Efficiency (follow-up):
    - Issues (linking to the IA 'Progress' database (below),
    - Resolution of issues,
  - Assessment closure (subject to further monitoring, random checks, complaints, JIC comments etc.), by the TL and, where necessary for internal Quality control purposes, by one or two other IA members forming an advisory committee;

- The '**Assessment of VPA requirements'** table (See Chap. 7.1), which provides a summary of the status of the assessment of all requirements under the different column headings. It should be read in conjunction with the table 'Baseline review of relevant VPA requirements and state of implementation' for more detailed references. The assessment can be "closed" for each requirement, for one of the possible reasons provided in 5.1.2 below. The table also keeps track of requirements for which there is 'Review in progress, or ongoing compliance'. Only significant findings that require comments or further attention are reported under 6.1 in this report.
- The IA '**Risks & Issues Tracking' Database** ("IA Progress DB"), as introduced in the Inception report (6.11) and constantly improved since then. A copy of the updated table is provided in this report, as Chap.7.2 in Volume 1.
- In addition, for the Audit 4, the IA TL undertook a listing, review and assignment among the IA Team of all points in the Audit 3 report that had been left for future "attention" or "investigation" or "follow-up" by the IA. This gave lieu to a '**Detailed Audit 4 activity planning**' Excel table which the IA Team then used to list up and prioritize the scope of the audit meetings and information requests during the Audit 4 and assign actions within the team. Other sources to be used in future: reviews in progress in 'Assessment of VPA requirements' (with more detail in 'Baseline review of relevant VPA requirements and state of implementation').

5.1.2 Work undertaken

The '**VPA structure and content.xlsx'** table was initially populated with all the VPA **Articles** and their paragraphs, broken down into individual requirements (as completed during Audit 1). This has continued during Audit 2 with a systematic review of all clauses from the VPA **Annexes** I and II (down to Annex II, Chap. 4 in the Audit 2 report). It resumed again during Audit 3 and reached Annex II up to Section 8, and up to the Appendix A Section 1 and the beginning of Section 2 (that contains the Legality Matrix).

The Independent audit of VPA requirements is limited to "relevant" VPA requirements i.e. requirements that have been found of (direct or indirect) relevance to the IA mandate: the LAS is established in the VPA, especially but not only in the Annex II, and many other articles and annexes of the VPA are indeed relevant to the LAS, including to the functioning of the IA; therefore, assessing the "Efficiency of the FLEGT licensing scheme and effectiveness of the Legality Assurance System (LAS)", as per the IA mandate – using the top-down approach - started at the level of the VPA articles and continues through the VPA annexes.

Each requirement is then copied in to the table '**Baseline review of relevant VPA requirements and state of implementation'**. This effort was not continued during Audit 4 as it was not an agreed point of focus with IAWG.

Up to Audit 3, the IA TL carried out the assessments through investigation and auditing in several different ways:

- Desk study;
- Internal consultations with other experts of the IA team;
- Formal information requests to LAS implementation partners and stakeholders;
- Meetings in Monrovia.

In some cases, the assessment could be immediately completed and "closed" through desk review for one of the following possible reasons:

- Requirement provided "by definition" and fulfilled through the ratification of the EU-Liberia VPA on 01/12/ 2013, without any further issue at the present stage;
- Requirement fulfilled through the "Required measure implemented";
- Requirement considered to be "Not in the IA's scope";
- Requirement considered to be "For information only"; or
- Fulfillment of the requirement "Assumed".

For the other requirements, the assessment went on, and:

- The information requests were copied into the next section (summary '**Track record of activity**'), where all the subsequent follow-up steps (e.g. dates of responses received, information gathered, further action) are also recorded (without the details; only organizations are named) for each requirement;
- The IA keeps full **audit records** (with all the details) in separate individual files (in MS Word, MS Excel, or email/html format) as well as a **compilation** of all elements in one file for each question so as to reconcile all inputs and try to build-up a reliable corpus of evidence (evidence gathered corroborated, through findings or inputs from different sources, and any doubt or contradiction addressed);
- As mentioned in 4.3, information and clarification requests through face-to-face meetings or by emails or calls include, where possible, a debrief with the relevant stakeholder in person or by email so that a "response right" is given to the auditee or informant;
- Most results are compiled in the table '**Baseline review of relevant VPA requirements and state of implementation'** itself, in a synthetic way under 'Evidence found' and/or with the reference of the corresponding section in the audit report where it is discussed is provided (See 5.1.1);
- Important findings, where the case exists, are discussed in the next Chap. 6 'AUDIT EVIDENCE AND FINDINGS' in this report, Chap. 6.1 'Baseline review of VPA/LAS requirements and state of implementation'.

5.1.3 Track record of activity

This section includes records from implementation of the Audits 1, 2 and 3. These records stay in this section until the related investigation was finalized in the previous report. Then they should be moved - together with the corresponding 'Audit evidence and findings' (from Chap. 6) or 'Conclusions, Notes for further IA action, & Recommendations' on new issues' (from Chap. 7) - to the Chap. 7.3 in the report, titled 'Baseline review of VPA requirements, Track record of activity'.

Copies of the Information requests sent during these audits – where felt necessary for collection of evidence - are provided. The answers received are compiled in separate audit records and issues are addressed under 6.1.1.2 onward.

As explained before, the references link to the corresponding requirements in the table 'Baseline review of relevant VPA requirements and state of implementation' (for the IA's internal use).

Ever since Audit 1, the question for the IA has been whether:

- To send further reminders, in order to follow-up from last email exchanges; or
- To keep lists of questions for later face-to-face auditing meetings, where understanding and clarifications are difficult to obtain by email; or, where initial

(Audit 1) questions were not referenced against the VPA/LAS implementation framework (i.e. not resulting from the systematic review of LAS' requirements from VPA Annex II, mainly),
- To transfer the inquiry to under the relevant requirement for assessment.

Reminders were indeed sent, and questions were discussed during face-to-face auditing meetings where possible during Audits 2 and 3 and, for some, followed-up during Audit 4. In due course, the questions and associated discussions are being moved to under the relevant requirement(s) for LAS implementation where they are best addressed.

5.1.3.1 Investigations already moved from this Section

- Investigations moved to 6.4 for 'Follow-up on previously reported issues':
  - VPA Art. 8,1b (See 6.4.14)
  - VPA Art. 22,2d (See 6.4.15)
- Investigations completed and moved to 7.3.1 'Baseline review of VPA requirements, Track record of activity': to this report for archiving:
  - VPA Art. 8,1e
  - VPA Art. 14,2
  - VPA Art. 16,2-3
  - VPA Art. 19,1-2
  - VPA Art. 19,3a, 3b, 3d, 3e, 3f, and 3g
  - VPA Art. 19,3c, 21,3 and 24,7
  - VPA Art. 25 and 29
  - VPA Art. 26.1
  - VPA Art. 26.3.

5.1.3.2 VPA Art. 8,1b

Information request

19.12.2017: email sent to SGS/LVD, FDA, and VPASU (Cc: SGS, EU, DFID, IA)

"The IA is conducting preliminary investigation into the VPA requirement whereby **the Legality Assurance System (LAS) shall ensure that only shipments verified as legal (i.e. legally produced or acquired) are exported to the Union** (Art. 8,1).

The IA defined three audit criteria for this requirement:

- The LAS is adequately designed and implemented to ensure that shipments have been legally produced or acquired (which relates to the broader question of LAS' efficiency);
- The Chain of Custody System (COCS) ensures that the shipments that are exported are (the same as) those that have been verified; and;
- No unverified shipments are exported.

History of interaction with the auditee:

20.12.2017: SGS suggested to coordinate with FDA early January 2018 and revert. The IA accepted to wait until early January.

02.01.2018: The IA received a comment from EFI in support of coordinated answers, as being probably better and a good exercise among the different entities involved, although it might take more time.

09.01.2018: The IA sent a reminder to SGS. Upon SGS's request, the IA re-sent the questions in one MS Word file to facilitate the follow-up and the replies for each particular email thread (and would do so for each information request in future).

11.01.2018: SGS provided initial answers, to 3 requests (VPA Art. 8,1, VPA Art. 8,1e and Re: Current issuance of export permits) in the same document. **12.01.2018:** The IA reviewed SGS's inputs and asked SGS to confirm a few points.

19.01.2018: The IA reminded SGS, asking for further answers by 22.01.2018 or the IA would not be able to incorporate them in the Audit 1 report, in which case the requested information will be reported as unavailable from the responsible institution at the time of closing the report. As of 23.01.2018 (submission of A1 report): SGS's further inputs were still pending.

10.07.2018, 17.07.2018: updated, further requests sent to SGS/LVD; **16.07.2018, 18.07.2018:** further answers received.

19.07.2018: one more request to SGS for clarification on p.6 of the document; **01.08.2018:** last clarification received from SGS.

Copies of the questions and results of this investigation were provided in the Audit 2 report (A2R), 6.1.2.5 and 7.1.2.1 and again in all subsequent reports.

Because risks and potential issues have been reported in A2R and some aspects still require some follow-up by the IA, these sections were moved to 6.4 for 'Follow-up on previously reported issues' under a new section 6.4.15 'Efficiency of border control' created in the Audit 3 report (A3R) (referring back to A2R 7.1.2.1 and to this Ch. 5.1.3.2).

5.1.3.3 VPA Art. 16,1-3 regarding stakeholder participation

Information request - Consultation to the IA Legal expert

As per the VPA Art. 16,1: Pursuant to the National Forestry Reform Law (NFRL) of Liberia related to participatory management of forest resources, Liberia shall ensure that implementation and monitoring of the VPA are done in consultation with relevant stakeholders participating via existing forest governance structures and by membership of the national body to be established as per Art. 16,2.

Question: ***What are the relevant references to participatory management of forest resources in the NFRL?***

Question: ***What are these "existing forest governance structures"?***

Question: ***What is your assessment of this requirement being implemented?***

Question: ***Do "stakeholders" include industry, civil society, local communities and other people dependent on forests (as per Art. 16, 1)?***

As per the VPA Art. 16,2: Liberia shall establish a national committee to monitor VPA implementation, made up of representatives of relevant Government agencies and other relevant stakeholders.

Question: ***Has such national committee been established?*** [i.e. the NMSMC maybe?]

Question: ***What evidence (legal act, procedures) exists to support this statement?***

Question: ***Do the members include Government agencies, industry, civil society, local communities and other people dependent on forests (as per Art. 16, 1 and 16,2 combined)?***

As per the VPA Art. 16,3: The Union shall hold regular consultations with stakeholders on VPA implementation, taking into account its obligations under the 1998 Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters.

Question: ***Are there mechanisms in place for the Union, or the EU Delegation to Liberia on behalf of the Union, to hold regular consultations with stakeholders on VPA implementation in addition to the JIC and the NMSMC?***

Question: ***Would you say that in doing that, the Union takes into account its obligations under the 1998 Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters?***

Please let the IA know if it should also consult with relevant VPA structures.

Responses received, information gathered, further action:

03.01.2018: TL sent a reminder plus a comment; **15.01.2018:** the IA Legal expert provided initial answers.

19.01.2018: TL asked one further question and informed about two other pending questions regarding VPA Art. 16,3 on which TL should follow up with the relevant people. As of **23.01.2018:** further input still needed from the auditee.

The above questions (regarding Art. 16,1-2) were discussed in A2R 6.1.2.11 and 7.1.2.2 (VPA Art.16,1), and in 6.1.2.12 (VPA Art.16,2); they are still under review in this A3R 6.1.2.12 (VPA Art.16,1), while the review of Art.16,2 was considered complete and moved to 7.3.1.11, and questions regarding the VPA Art.16,3 were eventually cancelled as lacking relevance for the IA.

5.1.3.4 VPA Art. 22,2d

Information request

29/12/2017: message sent to SGS/LVD, FDA and VPASU (Cc: EU, DFID, EFI, VPA Sec., FLEGT Fac., IA)

As per Art. 22,2d of the VPA: "**...the following information shall not be considered confidential** [for purposes of Art. 22,1]:

(d) Monetary fines imposed or regulatory action taken against any contractor (or FLEGT license-holder, in due course);

Question 1: ***Is such "Information of monetary fines imposed, or regulatory action taken against any contractor" therefore currently disclosed: where, and how, if any?***

The IA is so far aware that:

- Annex IX "describes the information to be published by the GoL or that can be made available to the public under the Freedom of Information Act 2010 by the GoL";
- The 1. 'Categories of information that will be routinely published', includes 1.6. 'Information on law enforcement in concession areas', (a) 'Penalties imposed

and the list of those who actually paid and those who did not pay or complied'; and that;

- 2.5. 'Information on law enforcement in concession areas', (a) 'Charges of violations, arrests, settlements and convictions associated with the operations under the forest resources license as recorded by the FDA', is also part of 2. 'Information available to the public when requested under the Freedom of Information Act'.

The following sub-questions were asked in an attempt to clarify the responses provided:

- Question 1.1: ***Where is such information published, what evidence can you provide of such publication of information, so that the Independent auditor can also access it?***
- Question 1.2: ***Does such information published by the PAD include "Information of monetary fines imposed", or "Information of regulatory action taken against any contractor"?***
- Question 1.3: ***Where from, and how is such information made available to the PAD?***
- Question 1.4: ***Is that protocol available, has it been validated and is it systematically and consistently implemented?***
- Question 1.5: ***Which report(s) are you referring to: summary field reports from the Law enforcement division, or others?***
  Question 1.6: ***Which two divisions are you referring to: PAD and LED?***
- Question 1.8: ***Does the PAD issue field inspection reports and to whom?***
- Question 1.9: ***What limitations do you see in the reliance on the reports from the Law enforcement division?***
- Question 1.10: ***Please can you provide evidence that such education and awareness process of the VPA to the Regions is a responsibility of the PAD?***
- Question 1.11: ***Can you provide a description of all the responsibilities of the PAD or indicate where these are documented?***
- Question 1.12: ***Would the publication in itself, of such information, be the responsibility of the Law enforcement division? If not, which entity has that responsibility?***
- Question 1.13: ***What would be the process for the Law enforcement division to provide relevant information to that entity for publication?***
- Question 1.14: ***Can you provide the Independent Auditor with a description of all the responsibilities of the Law enforcement division or indicate where these are documented?***

Responses received, information gathered, further action:

03/01/2018: The IA redirected the questions to the Public affairs division and the Law enforcement division of the FDA, upon advice received from the LVD Technical Manager.

09/01/2018: Both the FDA Public affairs and Law enforcement divisions provided initial answers.

10/01/2018: The IA reviewed the inputs received from the FDA Public affairs division and asked to address further questions (Q1.1 to Q1.11 above).

12/01/2018: The FDA/Public Affairs Manager provided further comments.

19/01/2018: The IA acknowledged the message but regretted the absence of replies to the further questions (Q1.1 to Q1.11) and informed it will have to accept that, in the absence of the requested information such information will be reported as unavailable from the responsible institution. It further asked one clarification.

As of 23/01/2018: replies to further questions Q1.1 to Q1.11 and clarification had not been received yet from the FDA/Public Affairs Manager.

10/01/2018: The IA reviewed the inputs received from the FDA Law enforcement division and asked to address further questions (Q1.12 to Q1.14).

19/01/2018: The IA informed the FDA/ Law enforcement Manager it will have to accept that, in the absence of the requested information, such information will be reported as unavailable from the responsible institution.

As of 23/01/2018: replies to further questions Q1.12 to Q1.14 were still pending from the FDA/ Law enforcement Manager.

The above questions and discussions (regarding VPA Art. 22,d) are being followed-up under 6.4.6 (Reporting on law infringement, enforcement of sanctions, and public disclosure of information) in this report as a previously reported issue. Section 6.4.6 as per its title looks at the chain of reporting, enforcement and publication, that involves several different FDA departments, which the IA would expect to include:

- At Level 2 in the Verification and licensing framework (See 6.1.7.3) for the reporting on law infringement: the Commercial and Community Forestry Departments (under internal auditing by LVD at Level 3, but the LVD does not apply sanctions, in the IA's understanding);
- The Law Enforcement Division (LED) in a law enforcement role that needs to be investigated, whether it includes the enforcement of sanctions (and which FDA Department does it, if not) – See 6.2.4.2; and
- The Public Affairs Division (PAD) for the public disclosure of information, also subject to confirmation of the PAD's roles and responsibilities.

Further findings on the LED and the PAD from field audits conducted during Audit 3 were added to Chap. 6.2 (Field audits), in 6.2.4.2 and 6.2.4.3, now carried over in the Volume 1 of this Audit 4 report, which are likely to eventually be archived in 7.3 at some point (same headings).

5.2 Follow-up on previously reported issues

This chapter concerns those issues that were already reported in previous audit reports. The actual follow-up of these "previous issues" is covered in Chap. 6.4 (new **Audit evidence** gathered in the course of implementation, and new related **findings** from comparing new evidence with the audit criteria; new developments on previous findings; or corrective measures applied in relation to previous issues).

The updated *Conclusions & Recommendations concerning these* ***previous*** *issues,* as well as any *Notes for further IA action*, are covered in the same Chap. 6 (6.4), while ***new*** *issues* explored during Audit 4 are addressed under 6.1 to 6.3.

The '**Main** conclusions and recommendations from Audit 4' are then summarized in Chap. 3, in the Vol.1 of this Audit 4 report (A4R) from *new or updated issues* (and in this Vol.2 *from "old" issues*).

As per 4.5.4, the IA Progress DB shall be used as a single source for the identification of all "previous issues", with details provided in other parts of the reports, but other sources in previous audit reports or other documents include:

- **Chap. 3, Main conclusions and recommendations** (C&Rs) in the previous (Audit 3) report (A3R), with references provided to A3R Chap. 6 (Audit evidence and findings) or 7.3 (if archived).
- **Chap. 6 (Audit evidence and findings)** in the previous (Audit 3) report (A3R), for ***other* significant issues** detected during the previous audit (Audit 3) but that did not contribute to the Main C&Rs.

The sources for *updates* on these previous issues include:

- Any **new evidence** gathered during Audit 4;
- The **Reports on complaints** and **Monitoring reports** incorporated in the Six-monthly progress reports that covered the period elapsed since the last audit, including any **Report of Corrective measures implemented** since the previous audit.
- The **Forward Planner** that was presented at the last JIC (corrective actions, assignment, timeframe; and color-coding reflecting the level of implementation);
- The JIC's **Aide memoires** from the last JIC
- New **complaints** and **informal reports** received, and results of **random checks** conducted since the previous audit.

5.3 Field audits

5.3.1 Audit itinerary (summary)

This section can be found in the separate Volume 1 of this Audit 4 report (A4R, Vol.1), where it has been newly created.

5.3.2 Interaction with External Service Providers during Audit 3

This section can be found in A4R, Vol.1, where it has been updated.

5.3.3 Other field audits

This section can be found in A4R, Vol.1, where it has been updated.

5.4 Review of the current issuance of Export permits

Justification for the Review of current issuance of Export permits:

- The Export permits are a precursor of the FLEGT Licenses and are likely already used in EUTR Due Diligence to support imports from Liberia to the EU. Do they currently provide reliable evidence of traceability and legal compliance? The analysis of this question takes place in Section 6.3 (Vol.1/Vol.2);
- This is also a transverse theme. The investigation, working backward from the issuance of the Export permits, encapsulates key requirements of the LAS linking to different compliance areas;

- Furthermore, as it was suggested to the IA, "the Export Permit system and process is the ONLY law enforcement mechanism currently in place" in Liberia.

This section includes records from implementation of the Audits 1, 2 and 3. These records stay in this section until the related investigation was finalized in the previous report. Then they should be moved - together with the corresponding 'Audit evidence and findings' (from Chap. 6) to the Chap. 7.5 in this Audit 4 report, titled 'Review of the issuance of Export permits, Track record of activity'.

This investigation is being conducted using the two main methods that the IA has adopted: Baseline review of VPA requirements, and Field audits. It has been further divided into two assessment levels: System-based assessment and Performance-based assessment[24].

As part of the Baseline review, history and copies of the Information requests sent during the Audits 1, 2 & 3 – where felt necessary for collection of evidence - are provided below.

Information request

13/12/2017: Questionnaire to SGS/LVD, FDA (Cc EUD, DFID, VPASU, EFI, IA).

Introduction

"Export permits for timber are currently being issued by Liberia.

They are issued for each export shipment on the basis of attested compliance with a number of traceability and legality requirements. Therefore, they are a *de facto* precursor of the FLEGT Licenses. Meanwhile, they are an important source of information that EU importers already use, or should be able to use, in the absence of FLEGT licensed timber from Liberia, to meet the Due Diligence requirements of the EU Timber Regulation (EUTR). As such, they should also constitute tangible evidence that the products derive from legally harvested timber in Liberia (or from third countries *via* Liberia). Do they currently provide such reliable evidence of traceability and legal compliance?

This preliminary investigation, working backward from the issuance of the export permits, encapsulates key requirements of the LAS linking to different compliance areas."

The questions asked were, later on, restructured and further detailed or complemented as follows (with the previous numbers in brackets, where changed). These questions are all related to the "system-based assessment" of this issue.

Question 1: ***Are Export permits currently being issued by Liberia?***

Question 2 (5, 3, 8): ***Where is the Export permit established in the Liberian laws & regulations? Exact reference? What does it say? To whom is it issued and which (government or private sector) entities therefore request it? For which products? For exports to all destination countries, either EU or non-EU countries?***

- Qu. 2.1: ***Such "timber export license" only refers to (and is conditional on) the payment of fees (export license fee and "all other Authority-administered fees"). Is it therefore something different from and additional to the export permit (EP),***

[24] Also corresponding to the "Stage 1" and "Stage 2" audits' approach used in the IA's methodology (See 4.3.2).

or is it covered by EP because EP is also conditional on the payment of all fees? Please advise.

To which extent such export permits at this stage allow EU importers to comply with the EU Timber Regulation, until Liberia can begin issuing FLEGT license, is another question (as in the above Introduction) left for future investigation.

Question 3 (2, 10): ***By whom? Where is the mandate given to the responsible Government body or agency, for issuing export permits, documented?***

- Qu. 3.1: ***Do you confirm this?***
- Qu. 3.2: ***What evidence is there that the Liberia Licensing Department (LLD) [created in the VPA (TBC)] will be responsible for issuing the Export Permits?***
- Qu. 3.3: ***So, until the LLD is created, who is therefore responsible for issuing the Export Permits?***
- Qu. 3.4: ***What evidence is there that the FLEGT Licenses once they become effective will replace the Export Permits and of the transition from the current system (Export permits) to the future system (FLEGT licensing)?***

Question 4 (4, 16 part): ***Is the export permit issuance step (and process) reflected in the COCS? Where? How? For what products? And are records (list, copies) of all Export permits issued being kept? Where? Has the Independent auditor access to these records?***

- Qu.4.1: ***However, can you provide the exact reference for your statement that "as per the NFRL a CoCS ensures traceability from forest to export"?***
- Qu. 4.2: *However, the SOPs in the Manual are not clearly numbered.* ***Can "23.1 Standard Operating Procedure" in the Manual be referred to as "SOP 23"?***
- Qu. 4.3: ***Does "23.1 Standard Operating Procedure (SOP 20)" in the Manual mean that SOP 23 is the "former Liberfor SOP 20"?***
- Qu.4.4: ***Please indicate where the procedures for going through all the approval steps (as per the STATUS HISTORY tab) can be found.***
- Qu.4.5: ***Please explain why the "T" can have 3 colors (red, orange or green) and what it implies. Please explain why the number of steps recorded in the TRACEABILITY DETAILS (above) is variable, which are compulsory and which are not.***

Question 5 (9): ***What products are covered by a particular Export permit, on the basis of which product list?***

Question 6: ***What general procedures and underlying regulations govern just the Export permit issuance step by Liberia? Where can these be found?***

- Qu. 6.1: ***Please therefore advise why you say "See NFRL and 10 core regulations". Anything in the Code of Forest Harvesting Practice (CFHP), the Forest management planning guidelines or else?***
- Qu. 6.2: ***What is the origin (history) of these SOPs (are they anchored in some regulations or part of COCS development)?***
- Qu. 6.3: ***The Independent Auditor has no access to any information beyond this list and only sees "red Ls" (or "grey Ls" where it says that "There are no legal details for this product"). It is therefore unclear whether these criteria were verified, by whom, what the results of such verification were, and how these results were taken into account in the decision to issue the Export permit. Please advise.***

- Qu. 6.4: ***Please explain why only some, but not all, of the Indicators of the Legality Matrix are found in both places.***
- Qu. 6.5: ***Does this suggest that some Indicators of the Legality Matrix are managed in LiberTrace while others are managed outside of LiberTrace? If that is the case, where is such division of responsibilities documented, showing where and by whom the other Indicators are managed?***

Question 7. The Independent Auditor is aware of a document titled 'Requirements for Export Permit under current Regime'. However, two different but apparently similar versions are posted on the FDA website in Forestry Laws & Regulations, Export Permits, Species List and Prices (http://www.fda.gov.lr/information/laws/#115-export-permits-species-list-and-prices): 'Requirements-for-Export-Permit-under-current-Regime.pdf' of Nov. 2016 (Verification of documentation before issuance of Export Permit), and 'Requirements_for_Export_Permit_under_current_Regime_79.pdf' (same)

- Question 7.1 (6.1): ***What is the difference between these two documents, if any?***
- Questions 7.2 (7): ***Question to the Legal expert of the Independent auditor:***
  - What is the legal status of this document (e.g. regulation, instruction, guidance?) and is it enforceable *as such*?
  - Or does it just summarize and refer to other "*legal requirements that are* [or must be] *met to export logs from Liberia (and) are embedded in the National Forestry Reform Law of 2006 (NFRL/2006), the Ten Core Regulations and the Code of Forest Harvesting Practices. (and) In addition, Standard Operating Procedures developed for the implementation of the Chain of Custody System, which are currently in use, are implemented…*", plus "to the VPA Legality Matrix", in which case it is rather those documents that in fact set out the *enforceable* requirements?
  - Please help filling in the above tables as much as possible or provide guidance.
- Question 7.3: ***Please help identifying what is therefore missing.***
- Qu. 7.4 (18.1): ***Of which processes in EP issuance is SGS not in charge?***
- Qu. 7.5 (18.2): ***Which processes in FDA or other MACs, in your view, are not yet in place?***

Question 8 (15): ***Is there a set of more detailed regulation(s) or procedure(s) governing the workflow up to export, time schedules, expiry dates of the documents etc.?***

- Qu. 8.1 (15.1): **Where is *the workflow further documented as far as other Government bodies or agencies involved (e.g. other FDA Depts., LRA, Central Bank of Liberia) are concerned?***

Question 9 (11): ***What capacity has been created within the Government body or agency responsible for approving/issuing EPs (LVD)? What evidence can be provided of such capacity?***

- Question 9.1 (11.1): ***As evidence (and further references for future attention) of SGS' mandates, can you provide a copy of SGS' contracts (without the financial elements)? Of SGS' Technical Proposals (if not included in the Contracts)? Of SGS' ToR for both contracts?***
- Question 9.2 (11.2): ***As references for later understanding of the transfer process, can you indicate which are the latest implementation plans and progress reports***

for both COCS and Handover and whether these documents are available on the FDA website or the SGS Liberia ShareFile (or if not provide a copy of them)?

- Qu. 9.3 (11.3): ***How is the capacity within the LLD (or until the LLD is created, the other FDA department currently responsible for issuing the Export Permits as per Qu. 10.1) being created?***

Question 12: ***In case the issuance of an Export permit is based on different documents (e.g. certificates, approved plans) related to different compliance areas placed under the responsibility of different Government bodies or agencies, which documents are these: just as per the above-mentioned document?***

Question 13: ***But which Government body or agency is responsible for each requirement?***

Question 14: ***Can this be easily crossed-referenced with the Legality Matrix? Which Verifiers?***

Question 17: ***Do these records contain a verification or assessment (ideally in the form of a checklist, and Yes or No answers) easily showing whether each requirement was met?***

Question 18: ***If not, why?***

Question 19: ***On what basis has the Export permit otherwise been issued?***

Responses received, information gathered, further action:

13,14/12/2017: The IA Legal expert (KE2) provided initial responses to most questions, upon which the IA Team Leader (TL, KE1) acknowledged the answers and requested further clarifications from the KE2.

Development of a checklist to support the assessment whether the currently issued export permits have met all the requirements, if not yet existing[25], was suggested internally.

10/01/2018: VPA SU provided an initial answer to Qu.3.2.

11/01/2018: SGS provided initial answers, to 3 requests (VPA Art. 8, 1, Art. 8, 1e and Re: Current issuance of export permits) in the same document.

15,19/01/2018: the IA sent a review of SGS' answers with further questions in a restructured questionnaire (as per the above set of questions) reflecting growing understanding of the topic, and invited responses by 22/01/2018. The IA TL advised the IA Legal expert KE 2 that most of the further questions sent on 14/12 had now been addressed and highlighted one pending question.

22/01/2018: SGS provided further answers. The IA TL acknowledged the answers provided by SGS and advised it would follow-up in due course (next audit).

As of 23/01/2018 (closing of the A1 report)**:** further answers provided by SGS were still to be reviewed; and some clarification was still pending from the IA Legal expert.

10-13/04/2018: follow-up with the IA Legal expert (KE2).

Apart from minor points, SGS's answers provided on 22/01/2018 have been followed-up by the IA during Audit 2.

[25] Evidence of such a checklist developed by LVD has now been found, as discussed in 7.3.11.4

The answers received are compiled in separate audit records and issues related to Export permit are addressed in Chap. 6.3 in this Audit 4 report (Vol.1/Vol.2).

As part of the field audits conducted during Audit 2, the IA tested Export permit issuance and LVD reviews against relevant requirements through a sample of permits issued to two operators (both CFMAs). This consisted in a comparative analysis of the application of two checklists, the one developed by LVD and another one by the IA, both derived from the same document titled 'Requirements for Export Permit under current Regime'. The analysis, serving as an assessment of both the LVD checklist itself, and of its application, was first presented in Chap. 6.4.3.4 in the Audit 2 report as part of the follow-up on the Export permit issuance issue and is again presented in the corresponding Chap. 7.5.3.1. in this Audit 4 report Vol.2, for ease of reference (and **Annex 8.14** to this Vol.2).

Further analyses of Export permit issuance were conducted during Audit 4 since this was an agreed point of focus. The results will eventually be compiled in one place.

It will not be easy to move these initial discussions regarding the Export permit to under relevant requirements in the LAS as the IA progresses: Export permits are not a VPA requirement as such; only in ANNEX VIII of the VPA can relevant references to the Export permit be found[26]. This is why this remains a separate section in the successive audit reports.

The issue of the transition from the current system (Export permits) to the future system (FLEGT licensing) was captured in the above Qu. 3.4 and associated capacity building in Qu. 9.

[26] To 'Supporting measures', to 'Establishing the Liberia Licensing Department' (5.2), including for actually "phasing out export permits"; and, in Annex VII, a Milestone provided in "LAS: licensing established", for "Export permits phased out and application of the new licensing system by LLD"

6 AUDIT EVIDENCE AND FINDINGS

6.1 Baseline review of VPA requirements and state of implementation

6.1.1 Legal and regulatory framework relative to LAS implementation

Status: The following reviews have been considered completed in the previous Audit report 3 and have now been moved to under 7.3.6 (7.3.6.1 to 7.3.6.10) in this Audit 4 report, Volume 2 (A4R Vol.2) for archiving.

6.1.1.1 List of relevant references in the VPA

6.1.1.2 Introduction

6.1.1.3 Legal framework vs. institutional & governance frameworks

6.1.1.4 Overview, as per the VPA preamble

6.1.1.5 The VPA Legality Definition: an exhaustive representation, or a sub-set of Liberian law?

6.1.1.6 Hierarchy of the legal and administrative texts

6.1.1.7 Existing Liberian forestry legislation

6.1.1.8 What it takes for an implementing text to become a by-law regulation (binding on forest stakeholders)

6.1.1.9 Land Rights Act and Local Government Act

6.1.1.10 Different types of forest licenses: CFMAs

Detailed information collected, regarding 'Incorporating CFMA into the LM' (from the **7th JIC** Aide-memoire) has been moved to **Annex 8.19** to this A4R Vol.2.

In essence, the agenda for the 7th JIC (Feb. 2019) included technical sessions on:

- Overview of the Terms of Reference for the JIC Committee on the Inclusion of CFMAs into the Legality Matrix

- Announcement of nominees on the committee
- JIC Endorsement of the TORs
- Status update on CFMA portion of “Compliance Procedures for the VPA Legality Matrix Verifiers”; Update on availability of documents on CFMAs and FMCs on FDA’s website since the last JIC
- Update on the work of the Community Forestry Working Group; Progress and Challenges on the CFWG advisory role in CFMA Allocation
- Status of Draft Template for Commercial Use Contract for Community Forests.

6.1.2 VPA Articles

The following reviews have been considered completed in the previous Audit report 3 and have now been archived under 7.3.1 (7.3.1.1 to 7.3.1.5) in this Vol.2:

6.1.2.1 VPA Art. 3,1b

6.1.2.2 VPA Art. 3,2

6.1.2.3 VPA Art. 4,1a

6.1.2.4 VPA Art. 4,2

6.1.2.5 VPA Art. 8,1a

6.1.2.6 VPA Art. 8,1b

Since this review was conducted in A2R but an issue was raised that required a follow-up, the discussion was moved to 6.4.14 ‘Efficiency of border control’ in this report for further investigation.

The following reviews have been considered completed in the previous Audit report 3 and have now been archived under 7.3.1 (7.3.1.6 to 7.3.1.10) in this Vol.2:

6.1.2.7 VPA Art. 8,1e

6.1.2.8 VPA Art. 8,2

6.1.2.9 Art. 9,1a

6.1.2.10 Art. 9,1b

6.1.2.11 VPA Art. 14,2

Suggested further IA Action: Confirm to what extent the “intention” of the VPA Art. 14,2 is attained with the **Forward Planner (FP)**, including *whether referencing with the milestones in the initial Annex VII’s schedule is also somehow realized*, or whether this can be considered as a gap with regard to Qu.3 pursuant to Art. 14,2 (“The Parties, working through the JIC, shall evaluate the progress of implementation with reference to the schedule set out in Annex VII”).

Note: a request for an insight whether ‘evaluation of progress in implementation with reference to the schedule in Annex VII' is indeed being achieved through the Forward planner (or other mechanism) was sent to EFI on 14.01.2019.

Follow-up during Audit 3:
EFI working on this with the VPA secretariat. (EFI, 05.02.2019).

The following reviews have been considered completed in the previous Audit report 3 and have now been archived under 7.3.1 (7.3.1.11 to 7.3.1.13) in this Vol.2:

6.1.2.12 VPA Art. 16,1-2

6.1.2.13 VPA Art. 19,1-2

6.1.2.14 VPA Art. 19,3a, 3b, 3d, 3e, and 3f

6.1.2.15 VPA Art. 19,3g

The analysis of the VPA Article 19,3g regarding the publication of **JIC Annual reports** by the FDA is now being followed-up in this report under 6.4.16.

6.1.2.16 VPA Art. 19,3c, Art. 21,3, and Art. 24,7

Status: Reviews completed; now moved to 7.3.1.14 in this A4R Vol.2 for archiving.

6.1.2.17 VPA Art. 22,2d

The analysis conducted in the Audit 1 report (6.1.1.7) is now being followed-up under 6.4.15 (Reporting on law infringement, enforcement of sanctions, and public disclosure of information) in this report as a previously reported issue.

The following reviews have been considered completed in the previous Audit report 3 and have now been archived under 7.3.1 (7.3.1.15 to 7.3.1.17) in this Vol.2:

6.1.2.18 VPA Art. 25 and Art. 29

6.1.2.19 VPA Art. 26,1

6.1.2.20 VPA Art. 26,3

6.1.3 Annex II - Introduction of Legality verification in the VPA

Status: Review completed; now moved to 7.3.2 in this A4R Vol.2 for archiving.

6.1.4 Annex II - Introduction of the chain of custody system (COCS)

Status: Review completed; now moved to 7.3.3 in this A4R Vol.2 for archiving.

6.1.5 Annex II - Introduction of, and conditions for licensing

Status: Review completed; now moved to 7.3.4 in this A4R Vol.2 for archiving.

6.1.6 Annex II - Definition and coverage of the LAS' scope

Note: this section might in future be relocated under relevant criteria of the LM, LVD or else.

6.1.6.1 Relevant references in the VPA

Status: Review completed; now moved to 7.3.3.1 in this A4R Vol.2 for archiving.

6.1.6.2 Discussion

Status: Review completed; now moved to 7.3.3.2 in this A4R Vol.2 for archiving.

6.1.6.3 Timber sources

Status: Review completed; now moved to 7.3.5.3 in this A4R Vol.2 for archiving.

6.1.6.4 Timber markets

Status: review in progress, still, in A4R, Vol.1 (6.1.6.4).

6.1.7 Annex II - Institutional set-up of the LAS

6.1.7.1 Establishment of the Legality Verification Department (LVD)

Status: Review of the *initial* establishment of the LVD now considered complete. It has been moved to under 7.3.8 ('Broad institutional set-up of the LAS') in this A4R Vol.2 for archiving as 7.3.8.1, with the same heading).

6.1.7.2 The Liberia Licensing Department (LLD)

Status: review still in progress until LLD is established, in A4R, Vol. 1 (6.1.7.2).

When complete, it could be moved to under 7.3.8.2 for archiving.

6.1.7.3 Verification and licensing framework

Status: Review considered to belong to the *initial* establishment of the LVD and to now be complete. It has therefore also been moved to under 7.3.8.1 for archiving.

6.1.7.4 Legality definition and related verification procedures

Status: Review completed; now moved to 7.3.8.3 in this A4R Vol.2 for archiving.

6.1.7.5 Data management

Status: Review completed; now moved to 7.3.8.4 in this A4R Vol.2 for archiving.

6.1.7.6 Legality verification of operators working under an independent forest management certification scheme

Status: Review completed; now moved to 7.3.8.5 in this A4R Vol.2 for archiving.

6.1.8 Annex II - Implementation of Legality verification

Status: Review completed; now moved to 7.3.9 in this A4R Vol.2 for archiving.

6.1.9 Annex II - Implementation of the Chain of Custody System

Status: Review completed; now moved to 7.3.11 in this A4R Vol.2 for archiving.

6.1.10 Annex II - Failure to comply with the LAS

Status: Review completed; now moved to 7.3.12 in this A4R Vol.2 for archiving.

6.1.11 Annex II - Licensing

Status: Review completed; now moved to 7.3.14 in this A4R Vol.2 for archiving.

6.1.12 Annex II - Independent audit

Status: Review completed; now moved to 7.3.15 in this A4R Vol.2 for archiving.

6.1.13 Annex II - Appendix A: Legality Definition, Matrix and Verification Procedures, 1. Plan for Forestry Policy and Law Reform

Status: Review completed; now moved to 7.3.16 in this A4R Vol.2 for archiving.

6.1.14 Annex II - Appendix A: Legality Definition, Matrix and Verification Procedures, 2. Legality Matrix

Status: Review completed; now moved to 7.3.17 in this A4R Vol.2 for archiving.

6.1.15 Annex II – Appendix B: OVERVIEW OF THE CHAIN OF CUSTODY SYSTEM (COCS)

Status: review still in progress, in A4R, Vol. 1 (6.1.15).

6.2 Field audits

As recalled in Chap. 4.6 in this Volume 2 of the Audit 4 report (A4R, Vol.2), "field audits" actually include 'Office, System and Field audits'.

The structure of this entire section keeps evolving as the chapters are increasingly linked to either the performance of the LAS implementation partners or to the review of specific VPA requirements and with references to the VPA and the Legality matrix in particular.

6.2.1 Implementation of the role of Government, the Commercial Forestry Department (CFD) of the FDA

6.2.1.1 Background from Audit 1

Status: Review completed; now moved to 7.4.1.1 in this A4R Vol.2 for archiving.

6.2.1.2 The Commercial Forestry Department (CFD) on the FDA Organogram

Status: Review completed; now moved to 7.4.1.6 in this A4R Vol.2 for archiving.

6.2.1.3 The Commercial Forestry Department (CFD) in the Legality Matrix

This chapter belongs to the performance assessment of the CFD.

The method used by the IA Audit team leader in the following tables during Audit 3 below had been to:

- First, look for requirements assigned to the CFD mainly in the Legality Matrix of the VPA (LM clauses, Other clauses);
- Then look at several criteria (e.g. Procedures, Templates) whether these are in place, have been correctly developed and are being used;
- Then to issue Comments and recommendations; and finally
- To assess the Relevance of the requirement in the LM.

LM Clauses	**2** Forest allocation **2.2** Prior to allocation of the forest contract, FDA has obtained a Concession Certificate from the Ministry of Planning & Economic Affairs (MPEA), approving the concession plan submitted by FDA and confirming that the proposed concession is consistent with national development objectives 2.2.1 Concession plan submitted by FDA to MPEA in respect of the contract holder's concession

	2.2.2 Concession certificate (or a written approval) issued by the MPEA to FDA, authorizing FDA to commence concession/ contract allocation activity for the specified forest area
Other clauses	N/A
Procedures	No procedures exist for FDA, but due to ease of operation no formal procedures are required
Templates	N/A
Comments and recommendations	FDA can fulfill this requirement within its current capacity constraints. Concession plans for existing concessions have been lost. An Amnesty letter has been written to JIC for the general issue over all types of forest licenses, reportedly by, or on request of CFD, but the IA has never got to see this letter. Currently, there is a moratorium on issuing any further FMCs in Liberia. **Recommendations:** That JIC addresses the issue of the missing documents and considers the amnesty option.
Relevance in LM	Fully relevant

Note 1: In terms of the FDA, the LM under the heading “Description” allocates the responsibility of these Level 2 verification roles to FDA CFD (presumably under its National Authorizing Division – NAD).

Note 2: However, it is not immediately evident from the LM what step-by-step procedure CFD is supposed to follow (to submit the Concession plan to the MPEA and be issued a Concession certificate or a written approval, then authorize concession/ contract allocation activity to commence for the specified forest area). For future attention, maybe the mentioned Procedure (LAS-LVD-0.2.2) does that, or maybe the draft “VPASU Procedures” do it, or the LVD and other Government checklists do. This is the challenge the IA feels about figuring out the day-to-day responsibilities of each Department, linking to the issue that the LM does not always clearly assign roles and responsibilities and tasks to specific FDA Departments already noted in a number of places.

The main issue that is being raised here is the one of missing concession documents (Concession plans, other prequalification documents, bid documents). It has been met already under the Issue **HII 18** (Current log exports are receiving export permits without complying with the list of official requirements), although not specifically.

The IA therefore registered a specific **ISSUE** (ref. **HII 25** in the IA Progress DB) about the **missing concession documents** (See 6.4.9 in this A4R Vol.2, as part of the Pre-felling requirements).

LM Clauses	**2.3** The Contract holder did comply with statutory prequalification requirements and was duly qualified by FDA to (i) operate in the forestry sector, and in the case of TSC and FMC, (ii) bid for the contract 2.3.1 Report of the prequalification committee regarding

	the prequalification process 2.3.2 Valid pre-qualification certificate issued the contract holder 2.3.3 Tax clearance showing no tax arrears at date of submission 2.3.4 Liquidity guarantee from reputable bank at date of submission 2.3.5 Business registration certificate predates pre-qualification certificate
Other clauses	N/A
Procedures	No procedures exist for FDA, but due to ease of operation, no formal procedures are required
Templates	N/A
Comments and recommendations	Many of the prequalification documents for the current concessions have been lost. Amnesty letter (See above) has been written to JIC. Moratorium on issuing any further FMCs in Liberia **Recommendations:** That JIC addresses the missing prequalification documents issue and considers the amnesty option.
Relevance in LM	Fully relevant

Note: The LM does not clearly allocate these roles to a particular FDA department, but the IA Audit TL has assumed the relevant FDA department is CFD, NAD.

Main issue raised here again: see above (missing concession documents).

LM Clauses	**2.4** The forest contract was tendered in accordance with the competitive bidding process and rules established by the Public Procurement and Concessions Act and the Regulations issued by the FDA 2.4.1 Public tender notice 2.4.2 Concession bid evaluation panel report 2.4.3 Due diligence report by FDA 2.4.4 Final report of bid evaluation panel to the Inter-Ministerial Concessions Committee (IMCC) 2.4.5 IMCC recommendations to the President
Other clauses	N/A
Procedures	No evidence of approved procedures existing for these functions
Templates	No templates exist for these functions
Comments and recommendations	Documents for existing concessions have been lost. Amnesty letter (See above) has been written to JIC. Moratorium on issuing any further FMCs in Liberia **Recommendations:** ▪ Approved procedures are required for the fulfillment of these LM requirements ▪ Templates are required for the reports mentioned in 2.4.2, 2.4.3 and 2.4.4
Relevance in LM	Fully relevant

Note: The IA Audit TL has assumed that the responsibility of this verification is with CFD (presumably NAD).

Main issues raised here: see above (missing concession documents); plus, lack of approved procedures and templates for the management of the competitive concession bidding process by FDA (linking to Issue MII 8 raised under 6.2.1.3 in Vol.1).

This review continues under 6.2.1.3 in A4R, Vol.1 with LM Principle 4 (and should be archived, once completed, under 7.4.3 Approval of Forest Management operations (LM P4) - Pre-felling requirements).

6.2.1.4 Capacity analysis of the Commercial Forestry Department (CFD)

Status: Review completed; now moved to 7.4.1.7 in this A4R Vol.2 for archiving.

6.2.2 Implementation of the role of Government, the Community Forestry Department (CyFD) of the FDA

As for the CFD, this section aims to research and assess whether the roles and responsibilities of the Community Forestry Department (CyFD) are clearly identified and assigned to the CyFD, and implemented, before assessing performance-based criteria of the CyFD.

6.2.2.1 The Community Forestry Department (CyFD) on the FDA Organogram

Status: Review completed; now moved to 7.4.2.1 in this A4R Vol.2 for archiving.

6.2.2.2 The Community Forestry Department (CyFD) in the Legality Matrix

This chapter belongs to the performance assessment of the CFD.

Like for the CFD above, the following tables below reflects the method used by the IA Audit team leader to:

- First, look for requirements assigned to the CyFD mainly in the Legality Matrix (LM clauses, Other clauses);
- Then look at several criteria (e.g. procedures, templates, checklists) whether these are in place, have been correctly developed and are being used;
- Then to issue Comments and recommendations; and finally
- To assess the Relevance of the requirement in the LM.

LM Clauses	**2** Forest allocation **2.1** All communities within 3,0 kilometers of the proposed concession area (called "affected communities") have been consulted by FDA and have given their informed consent to the proposed concession 2.1.1 FDA-prepared socio-economic survey report 2.1.2 Written notices of the consultation meeting(s) (Radio or News announcements) 2.1.3 Minutes and attendance list of the meetings showing key points discussed and agreements reached 2.1.4 Letter of good faith signed by communities

	undertaking to negotiate in good faith with any eventual contract holder
Other clauses	N/A
Procedures	A set of procedures exists for the issuance of CFMAs based on the "Nine steps" handbook, but not for FMC and TSCs. There is thus no consistent process applied in meeting the requirements stipulated under Indicator 2.1, above.
Templates	Template exists for social economic survey report.
Comments and recommendations	The intention is not to have done a full review of the status of existing socio-economic surveys regarding their level of compliance with procedures and forms. **Recommendation** (for further IA action): It is recommended that all CFMAs issued to date in Liberia* are fully evaluated during Audit 4** to check compliance with the 9-step process described in the "Nine steps" handbook. ** This was not an agreed point of focus with the IAWG for Audit 4
Relevance of the requirement in LM	Fully relevant, but the GOL needs to develop a set of rules for some form of regularization or amnesty to deal with documents that no longer exist that were required at the time of the awarding of the logging contracts. If this is not dealt with, then certain verifiers will not be able to be closed and the practical implication is that no FLEGT License can ever be issued to such operators.

* Annex 4 to the 6th JIC meeting (June 13-14, 2018) Aide-memoire contains the lists of current CFMAs awarded respectively in 2011, on February 23, 2017, Awarded in 2017, November 2017 (Pending Board Approval), and January 2018 (Pending Board Approval).

Note: The LM, under the heading "Description" in Principle 2, does not clearly allocate these roles to a particular FDA department, but the IA Audit TL has assumed it naturally belongs with the CyFD. Currently no instruction has been released by the FDA to allocate this responsibility to one of the other Departments, e.g. CFD, and no other department in the FDA has taken responsibility to monitor this.

The main particular issue here is actually not with the CyFD but that the set of procedures that exists for the issuance of CFMAs, in the "Nine steps" handbook, does not exist for FMC and TSCs and, therefore, no consistent process is applied in meeting the requirements stipulated under **Indicator 2.1**, above, for "affected communities" to be consulted by FDA and give their prior informed consent to the proposed concession.

ISSUE HII 27 was registered about this in the IA Progress DB during Audit 3:

ISSUE HII 27
Impact level: High;
Identified ISSUE: No procedures exist for FMCs and TSCs, unlike with CFMAs, to ensure that affected communities are consulted by FDA and give their prior informed consent to the proposed concession;
Recommendation(s): Ensure a consistent process is applied to meet the 'prior informed consent' requirement for affected communities in the issuance of FMCs, TSCs and CFMAs.

'VPASec Updates' on the 7th JIC version of the Forward Planner (FP) (February 25, 2019), not yet taking account of eventual 7th JIC decisions

Regarding **Indicator 2.1** (prior informed consent): "This issue could be handled through the newly created CFMA working group".

Reminder of **developments between 6th and 7th JIC** as per the FP:

- Oct – Dec 2018: "According to the FDA, this indicator has been fully respected given that All Timber sale contract [all TSCs] and CFMA signed agreement.
  The findings of the IA shows that:
  -FDA does not prepar socio-economic survey report
  -There are no written notices of the consultation meeting(s) (Radio or Newspaper announcements)
  Letters of good faith signed by communities undertaking to negotiate in good faith with any eventual contract holder through an FPIC process seem to exist."

The above statement in the VPASec Updates does not truthfully reflect the IA's findings. The IA therefore raised a new **ISSUE** (ref. **HII 35** in the IA Progress DB) about this during Audit 4:

ISSUE HII 35
Impact level: High;
Identified ISSUE: Several statements in the 'VPASec Updates' (7th JIC version of the Forward Planner) refer to falsely alleged findings of the IA and fail to provide any clear reference for these findings;
Recommendation: Any allusion to findings of the IA in the Forward Planner must provide a clear reference to, and truthfully reflect the exact IA's findings.

This review should be archived, once completed, under 7.4.2 Approval of Forest Management operations (LM P4) - Pre-felling requirements.

6.2.2.3 Capacity analysis of the Community Forestry Department (CyFD)

Status: Review completed; now moved to 7.4.2.2 in this A4R Vol.2 for archiving.

6.2.3 Implementation of the role of Government, Establishment and functioning of the LVD

For further IA action, dispatch relevant parts of this review, once completed, for archiving:

- under 7.3 (Baseline review of VPA requirements), 7.3.8 (Broad institutional set-up of the LAS), 7.3.8.1 ((VPA requirements for the) *Establishment* of LVD); or
- under 7.4 (Implementation of VPA requirements), 7.4.3 (Implementation of the role of Government, the LVD), related to the *actual establishment/ implementation* of the LVD (including overall performance assessment); or possibly
- under 7.4 (Implementation of VPA requirements), in sections related to the *functioning* of the LVD (i.e. performance assessment) but under specific LM requirements.

6.2.3.1 Background

Status: Review completed; now moved partially to 7.4.5.1 in this A4R Vol.2 for archiving.

6.2.3.2 Establishment of the LVD, SGS contract as Service provider, and handover process to LVD

Status: Review completed; now moved partially to 7.4.5.2 in this A4R Vol.2 for archiving.

6.2.3.3 Review of the Manual of procedures for LVD staffs

This review was considered completed during Audit 3 and was moved to under 7.4.6.1 (Performance of the LVD, SOPs) in this Volume 2 of the Audit 4 report.

6.2.3.4 The LVD auditing section (as of April 2018)

This review was considered completed during Audit 3 and was moved to under 7.4.6.2 (with the same heading) in this A4R Vol.2.

6.2.3.5 Assessment of LVD auditing against the CFHP Checklist

This review was considered completed during Audit 3 and was moved to under 7.4.6.4 (with the same heading) in this A4R Vol.2.

6.2.3.6 Further assessment and Capacity analysis of LVD during Audit 3

This review was considered completed during Audit 3 and was moved to under 7.4.6.6 (with the same heading) in this A4R Vol.2.

6.2.3.7 Issues potentially undermining the LVD handover process from SGS

This new section has been developed in the Volume 1 of this Audit 4 report (6.2.3.7).

6.2.3.8 Audit of a container loading inspection by LVD during Audit 4

This new section has been developed in the Volume 1 of this Audit 4 report (6.2.3.8).

6.2.3.9 Audit in a Timber Sales Contract (TSC) area during Audit 4

This new section has been developed in the Volume 1 of this Audit 4 report (6.2.3.9).

6.2.4 Implementation of the role of Government departments (FDA, Other roles)

6.2.4.1 Approval of a Community Forest Management Plan in a CFMA

This review was considered completed during Audit 3 and was moved to under 7.4.3.1 (with the same heading) in this Volume 2 of the Audit 4 report (A4R Vol2).

Further IA action: confirm that approval of a Community Forest Management Plan in a CFMA is an FDA Community Forestry Department (CyFD)'s responsibility (as per the role of the CyFD to be documented).

6.2.4.2 Law Enforcement Division (LED)

Status: Review partially completed and moved to 7.4.8.1 in this A4R Vol.2 for archiving.

Updates from the Audit 4 (meeting with LED Technical Manager (TM) and team)

TM stated "Everything in A3R is reality".

TM claimed to have "ToR" for the Division. In support of this claim, the IA received a hard copy of 'Mandates of the Forest Law Enforcement Division' and soft copies of 'History of FOREST LAW ENFORCEMENT DIVISION in the Forest Sector.docx', 'Listing of Law Enforcement Staffs.docx' and 'LAW ENFORCEMENT REDD+.xlsx')

Analysis of the document '**Mandates of the Forest Law Enforcement Division**':

The 1-page document contains 6 general principles related to not only *promoting* but also "*formulating policies and regulations* relating to forest law enforcement *and inspection"* and to *ensuring* legal compliance, law enforcement, good governance, and best practices for all related forestry activities in Liberia.

It also includes practical provisions for the Division to, in relation to logging:

- *"Conduct compliance audit of all logging concessions* as per NFRL 2006"
- "*Investigate crimes* associated with logging contracts *and report* to Management *etc."*.

The same document can also be found as Page 4 in the 4-pager titled '**History of FOREST LAW ENFORCEMENT DIVISION in the Forest Sector.docx**', together with other chapters INTRODUCTION, HISTORY OF LAW ENFORCEMENT IN THE FOREST SECTOR, and STRUCTURE.

Issue: The document is not dated, not signed, and there is no indication that it has been approved. The written question to the TM ("Can you inform who issued these documents and if they have been officially approved by the FDA Management and Board?") has remained unanswered despite several reminders.

Under HISTORY it states: "In 2006, as part of the Forestry Reform Program, the Forest Law Enforcement Division was established to make sure that the forest law, policies and international protocols are effectively applied."

Note: The IA has not found evidence of such founding act for the FLED and has not found any mention of that in several official documents[27] issued around 2006 and 2007.

Meanwhile, the IA was also provided with a copy of a diagram titled 'OFFICE OF THE MANAGING DIRECTOR' showing LED on the organogram of the FDA Office, reporting to MD, at the same level as the Internal Auditor and the Strategic Planning Unit. LED has a LED Manager, a Logging Contract Officer and a Wildlife Law Enforcement Officer, each with one assistant.

The 4-pager further provides the 'Present Organizational Chart-Forest Law Enforcement Division', showing a 'Total of 10 Staff', where Wildlife Law Enforcement is renamed Wildlife Confiscation, and which includes one Secretary and an unclear number and positions of forest law enforcement officers and law enforcement / inspection / wildlife confiscation rangers. It also contains a 'Proposed

[27] 2006 Liberia Forestry Policy and Implementation Strategy.pdf, 2006.02 Executive Order on Forest Sector Reform [Feb 1, 2006].doc, 2006.02, GOL, Executive Order_Forest sector reform.TIF, 2007.06 National Forest Management Strategy_Revised (v8).doc, and 2007.09 FDA Ten Core Reg's 101-110

Chart' with a 'Total of 43 staff', which includes 33 officers and rangers, supposedly being a recommendation from the Manager.

The document titled '**Listing of Law Enforcement Staffs.docx**' in fact shows 20 names, with their position and area of assignment (with a few "bikes" mentioned), of which:

- Central (6, including Driver)
- Alpha Logging, Lofa: 1 (bike)
- Free Port, Monrovia: 1 (bike) + 1
- CFMA & Others: 1 (bike)
- Botota, Bong County: 1 (bike)
- Tappita Region: 1 (bike)
- Buchanan Port, Grand Bassa County: 1 (bike) + 2
- EJ&J, River Cess County: 1 (bike)
- ALMA Wood, Cape Mount County: 1 (bike)
- ICC/FV, River Cess and Nimba: 1 (bike)
- Big Joe Town, Grand Bassa: 1
- Zwedru, Grand Gedeh: 1

In the document titled '**LAW ENFORCEMENT REDD+.xlsx**', 5 activities are assigned to LED under the LFSP, with a START date as of 01/09/2017 and an END date as of 30/03/2018, but all are with a 'Delay' or 'Not started' status.

Issue: The following written questions to the TM have remained unanswered despite several reminders ("What is the status of that "Annual Workplan"? Has it ever been proposed (by whom?), approved (by whom?), implemented and financed (by whom?)? No new workplan since then? Does this workplan represent the only interaction with LFSP since last year? How many compliance audits has LED completed in total, with or without LFSP support? Do you confirm: none so far?").

The LED TM further claimed that:

- "ToR for the TM exist, as for every staff member and office, and have not changed". The IA auditor was showed a hard copy but never received the copy he requested by email.
- "The Law Enforcement Handbook says it all!" IA Note: Is this the true assessment from the Audit 3? (above)
- It is critical that the Handbook, put together by VPASU plus lawyers, is approved, since LED staff have been trained at using it.

LED TM: "New template created for the Annual Compliance Audit Report, as per IA's recommendations, yet to be approved by MD" IA Note: as per the copy of the Memo to the MD dated 05.11.18 (received), which just followed the Audit 3. Copy of 'Annual Compliance Audit form' also received.

LED TM: "Yes, issuing fines on the basis of the findings of other depts. is the (LED's) role. But capacity has not been built".

To the IA's question "ACARs completed?", LED TM: "None completed. Visited Blooming Green and Sing Africa, based on complaints from field staff (on safety, drinkable water and gears, but were not working) …; have financial constraints. Zero ACARs so far". IA Note: This seems not accurate, since the IA has copies of TWO such reports - See above), but this was before time of the current LED TM. Understand "None since September 2018"?

IA: “The ‘Mandates’ only contain nice principles?” IA Note: copy of ‘Background’ Ppt (supposed to provide for more detail) requested, but to no avail so far.

IA auditor: “The DMDO also in practice (in contradiction with the organogram) concentrates the reports issued by the LED”. LED TM: “No, not true, reporting directly to the MD (see TM ToR; that’s the reality)”.

IA auditor recalls “a service provider will be contracted (…) to build the capacity of the FDA departments and divisions involved in implementing the LAS; Surely, the LED is part of it?”. LED TM: “Training has been received from VPA SU, many times, incl. against the Handbook”.

IA: “funding and broader support to LED from the World Bank-funded Liberia Forest Sector Project (LFSP)?”. LED TM: “No, LFSP has not offered any support, despite budget and work plans, formats, and series of letters”. The IA received from LED a copy of ‘LAW ENFORCEMENT REDD+.xls’ (see above). IA: “LFSP approved the LED plans?” No response. LED TM: “LED should be in the field. The money is there but they do not release it. No improvement from A3R”.

Follow-up meeting with the LFSP Program Coordinator (PC) during Audit 4 regarding funding and broader support to LED, and understanding of LED’s obligations wrt (annual?) compliance audits and reports (in substance):

- It is a valid statement that no support is currently being given to LED. There is possibly lower support following the Concessions Review; LFSP are holding on before implementing law enforcement, waiting for Level 2 checking to be implemented. The new Government is just understanding the situation.
- LED is under Commercial Forestry (LED TM reports to CFD TM).
- Forestry Training Inst.: We are sending all LED officers for a crash course. There is a mix of individual incompetence and lack of leadership.
- It is very clear LED has the mandate to do ACAR. LFSP funded one under the former TM.
- LED staff say they must go themselves to the field, rather than to expect inputs from and coordination with other depts.? They all want to go the field for DSAs.

Late replies received from LED staff to the below set of written questions to the TM (after several reminders), for future attention (whether the responses are relevant):

1) Has there been consultations with the VPA SU, the LFSP or any other technical assistance leading to that ACAR checklist and reporting template? *Response:* “*Even though LED has 25,000 USD allocated in the budget within the LFSP to conduct compliance audit within ten (10) concessions since 2017, there have some [?] assistance from the LFSP to the LED for compliance. The Division is using the inspection checklist [Which one?] and reporting template [Which one?] prepared by the VPA. We have also received some trainings and assistance from the VPA to promote ACAR*”.

2) Can you explain to the IA what the basis has been for selecting the 8 Principles, 15 Indicators and 36 or so Verifiers on the template? *Response:* “*We have ratified the issue and are [now?] using the entire eleven principles, inspection checklist and reporting template and the compliance handbook to conduct ACAR*”.

Is the template meant to reflect such approach and division of work (as per A3R’s rec.)? *Response:* “*The inspection checklist, eleven principles and the compliance and enforcement handbook cover the question of number three. But there are*

some circumstances of job descriptions that need to be addressed by management".

The Memorandum mentions a Law Enforcement reporting template that was attached to it. Is it the same template as the 'Annual Compliance Audit form 1' we have been discussing above? Did you get any reply from the MD to your Memo, or has there been any follow-up since then?"). *Response:* "*Management has been reviewing the MoU along with other FDA ToRs. However, plans and more efforts are on course for the Division to functions accordingly*".

A revision of the conclusions, recommendations and related issues raised regarding the LED has been placed in the Volume 1 of this Audit 4 report (A4R Vol1), 6.2.4.2.

6.2.4.3 Public Affairs Division (PAD)

This review was considered completed during Audit 3 and was moved to under 7.4.8.2 (with the same heading) in this A4R Vol.2 for archiving.

6.2.5 Implementation of the role of Government, financing of the Liberian Forestry Authority (FDA) as a whole

This review was considered completed during Audit 3 and not significantly modified during Audit 4. It was therefore moved to under 7.4.9 (with the same heading) in this A4R Vol.2 for archiving.

6.2.6 Implementation of the role of Government bodies (Other MACs)

6.2.6.1 Environmental Protection Agency (EPA)

This review was considered completed during Audit 3 and was moved to under 7.4.10.1 (with the same heading) in this A4R Vol.2 for archiving.

6.2.6.2 Ministry of Labor (MoL)

This review was considered completed during Audit 3 and was moved to under 7.4.10.2 (with the same heading) in this A4R Vol.2 for archiving.

6.2.6.3 Liberia Revenue Authority (LRA), Government forestry revenue collection

This is a new section being developed in the Volume 1 of this Audit 4 report (6.2.6.3).

6.3 Review of the current issuance of Export permits

6.3.1 Introduction to the assessment (as per the Questionnaire)

Status: preliminary review into the current issuance of Export permits, considered completed during Audit 3, and moved to under 7.5.1 in this A4R Vol.2 for archiving.

6.3.2 System-based assessment of Export permit issuance

Status: preliminary review into the current issuance of Export permits, considered completed during Audit 3, and moved to under 7.5.2 in this A4R Vol.2 for archiving.

6.3.3 Performance-based assessment of Export permit issuance

Status: reviews considered completed during Audit 3, and moved to under 7.5.3 (7.5.3.1, 7.5.3.3, 7.5.3.4) in this A4R Vol.2 for archiving.

6.3.3.1 Export permit issuance and LVD reviews using the "Current regime"

6.3.3.2 Export permit sample testing

6.3.3.3 Re-assessment and further assessment of EP Issuance during Audit 3

6.3.3.4 Review of the current issuance of Export permits during Audit 4

This new review can be found in the Volume 1 of this Audit 4 report, under 6.3.3.4.

6.3.3.5 Miscellaneous issues for future attention

This review can be found in the Volume 1 of this Audit 4 report, under 6.3.3.5.

6.4 Follow-up on previously reported issues

As noted in 5.2, while Chap. 5 (**Audit implementation**) only provided a list of those "previous issues", the actual follow-up is covered in this Chap. 6.4 (with any further **Audit evidence** gathered in the course of implementation or corrective measures applied in relation to previous issues, and including new related **findings** from comparing new evidence with the audit criteria, and from new developments of previous findings).

The updated *Conclusions & Recommendations* concerning these *previous* issues, as well as any *Notes for further IA action*, are now covered in the same Chap. 6.4, while *Conclusions, Notes for further IA action, & Recommendations on **new** issues* were directly addressed under 6.1 to 6.3, and all the '**Main** conclusions and recommendations from Audit 3' from both *old and new issues*, are summarized in Chap. 3 in this Audit 4 report (in the Volume 1 of this Audit 4 report (A4R Vol.1), if new or updated, or in the Volume 2 (A4R Vol.2) if not updated).

This section builds on the Audit 1 to 3 reports (Chap. 3 Main conclusions and recommendations, and related references in Chap. 6.4, as well as 7.3 and 7.4 for archived reviews, for Conclusions, further IA action, and recommendations to the JIC). Where possible the specific issues reviewed are being regrouped and reclassified under more relevant VPA/LAS requirements.

For issues previously followed up in Ch. 6.4 in the Audit 3 report (A3R):

- If the Investigation was completed in A3R, the discussion has now been moved to sections 7.3/7.4 in this report for archiving;
- If further investigation was required, the discussion remained in Ch. 6.4 (in A4R Vol.1, if updated, or in A4R Vol.2 if not).

6.4.1 Legal and regulatory framework relative to LAS implementation

6.4.1.1 Timber sources: development of new regulations and application to the LAS

As recalled in the Inception report (3.2.3.4), the drafting of regulations on timber in transit, imported timber, confiscated and abandoned timber and third-party access to concession areas started in early 2012 and the Chainsaw Regulation was initially voted in 2013.

The Joint Implementation Committee (JIC) meetings monitor the development of new regulations:

- As mentioned at the 4th JIC (2016), various law enforcement and regulatory initiatives were being developed and the following tasks were on the agenda:
  - Adoption of a regulation on abandoned logs in concession areas;
  - Review of detailed procedures and guidance for timber in transit;
  - Regulations on timber imports;
  - Regulations for confiscated timber;
  - First draft for PUP regulation;
  - Guidelines for Plantation Forests;
  - Adoption by the FDA board and publication of the Charcoal regulation;
  - Regulation on timber processing to be reviewed;
  - Etc.
- The 5th JIC (April, 2017) only mentions:
  - "Regulation on confiscated and abandoned logs to be in force" (Annex II, under Principle 6);
  - "FDA to expedite the (…) gazettement of the harmonized regulations related to the CRL. The regulations need to be approved by the President (…) before (…)" (Annex II, under Community Forest Integration).
- 1st Technical JIC meeting (Aug. 2017):
  - Transport and traceability (P6):
    1 EU will provide their updates on the regulations that have been sent to them. Comments and inputs from the EU are to be provided
    2 Continued efforts by FDA management to get the confiscated and abandoned regulation through the Presidency
  - Cross cutting issues, Regulatory framework completion, Tech. JIC Recommendations/Outcomes:
    1 EU to provide updates on the regulations on Imported timber and Timber in Transit
    2 Concession review has been publicized again for applications. Bidders are submitting proposals
    3 FDA to make sure that the four (4) regulations at the Executive Mansion are printed into hand bill before the next technical JIC
    4 EU to present official comments on 'import and transit timber' regulation by next technical JIC
- 2nd Technical JIC meeting (Dec. 2017):
  - Cross cutting issues, Regulatory framework completion, Tech. JIC Recommendations/Outcomes:
    1. "The 6 of the regulations under the regulatory framework has been vetted and validated" [Find out which]
    2. Out of the 6 regulations 2 of the vetted and validated regulations, import and transit timbers are still with the EU
    3. 4 consultations to be conducted, 2 in Monrovia and the 2 in Grand Bassa
    4. EU is awaiting EFI and VPASU which is pending and that will take 6 months
    [IA to reach better understanding. Note: request to EFI sent on 14.01.2019.]

Follow-up during Audit 3:
The IA wished to understand the comment from the 2nd Technical JIC re: completion of new regulations and consulted EFI. Response: We are working on this with the VPA secretariat. (EFI, 05.02.2019)

- 6th JIC (June, 2018):
  - "(…) a review process should be carried out to indicate whether all procedures and regulations are implementable" (Introduction, 4).
  - "(…) FAO is currently supporting the review of the Chainsaw Milling Regulations" (Introduction, 35);
  - "Timber processing regulation in place" (Annex 3, Forward Planner (summary), Principle 7, January 2018 Status, Capacity, coloured in orange).

Update by the VPASU (November 2017)

- The regulations originally drafted in 2012 have since then been "redrafted" with VPASU assistance to incorporate legal provisions (not previously considered, including the Amended Liberia Revenue Code), internationally accepted forestry elements, administrative enforcement elements, and inputs from the EU to meet international trade and EU timber regulations.
- The final re-drafts of these regulations were submitted in 2017 for FDA approval (See below updates).
- The review of the other, above-mentioned, regulations (see 4th JIC) is being done by the FDA.

Slow pace of regulations through the approvals process. Not within the control of FDA: regulations bogged down at Executive Mansion (180703 JIC Forward Plan Version, P6 Gaps at end **December 2017**; FDA MD continued engagement with the Presidency to ensure timely validation of regulations). (Stakeholder comment)

Regarding the status of new regulations and tools, VPASU had provided a document titled the '**FDA Development of Regulations to March 2018**' to the IA, subject to FDA review (See Annex 7.17 to the Audit 3 report), now outdated.

Extracts from the 7th JIC (Feb. 25 - **March 1, 2019**) Aide-memoire -

Status of Regulations and Procedures relevant to the Timber Legality Assurance System (TLAS)

17. The FDA provided an update on the status of regulations and procedures relevant to the implementation of the TLAS. The detailed list and status of the regulations [was] provided in **Annex 2 of [the] Aide-memoire** [see below*].

20. In considering these draft regulations [Timber Processing, Transit & Import Timber], the FDA stressed the importance of processing and value-adding within the sector and noted that consideration should be given to moving gradually towards 'zero round log export'. Such an objective can be implemented progressively with a percentage of all logs (i.e. 10%) to be processed in Liberia. Parallel consideration should be given to stimulating local economic growth and job creation from by-products/residue resulting from processing. The FDA stated that consideration could also be given to providing incentives for registered companies operating processing facilities. The EU and DFID were asked to consider options supporting such initiatives.

21. DFID cautioned against an outright log export ban noting that it has not always had the intended results in countries where such a ban has been implemented. DFID recommended that Liberia consider lessons learned from other countries, and thereafter Liberia can decide on the appropriate approach.

*** ANNEX 2 - List and status of TLAS relevant Regulations and Procedures**

1. The following regulations have been **completed and** are **in operation**:

a) Regulation on Abandoned Logs, Timber and Timber Products;

b) Regulation on Confiscated Logs, Timber and Timber Products; and the

c) Regulation on Third Party Access to Forest Resource Contract Areas.

2. Seven regulations have been drafted, regionally vetted and are **awaiting board approval**; these draft regulations include:

a) Regulation for Imported Logs, Timber and Timber Products;

b) Regulation on Transit Logs, Timber and Timber Products;

c) Private Use-Permit (PUP) Regulation;

d) Amendment to Regulation No. 109-07 on Penalties and Administrative Enforcement;

e) Regulation on the Revised Forest Sector Fiscal Policy;

f) Revised Chainsaw Milling Regulation 115-11; and the

g) Guideline/Manual and Procedure for Accessing Timber Resource Wastes/Residues;

3. Three regulations **under review** and intended for drafting

a) Amendment to Timber Processing Regulation 112-08

b) Regulation to establish Standard for Scaling and Grading of Timber and Forest Products in Liberia (NFRL 2006, Section 13.6

c) Code of Wood Processing Practices in Liberia

This review continues in A4R Vol.1, 6.4.1.1.

6.4.1.2 Development of implementing and enforcement tools as part of the LAS

This review is being conducted in A4R Vol.1, 6.4.1.2.

Many more documents have been, and are still being prepared and released, by SGS and VPASU, notably, which the IA is gradually adding to its IA Documentation database and files.

The paragraphs pertaining to Useful references, Conclusions, Recommendations and Further IA action, as well as many chapters from this section on 'Legal and regulatory framework relative to LAS implementation' have now been moved to under 7.3.6 (same heading) for archiving.

6.4.1.3 Applicable legal framework in the implementation and operational phases of the VPA

This review is being conducted in A4R Vol.1, 6.4.1.3.

6.4.2 Minimum cutting diameters

This review has been updated under 7.3.6.9 (with the same heading) in the Volume 1 of this Audit 4 report (A4R, Vol.1).

6.4.3 Current relevance of the Legality matrix / Urgent need to update and review the Legality matrix

This review has been updated under 7.3.7 in this Vol.2 (same heading).

6.4.4 Institutional setting for effective VPA implementation; Multiple conflict of interest issues for the Auditing section of the LVD and within the FDA

This review has been updated under 7.3.8.6 in this Vol.2 (same heading).

6.4.5 Operator's compliance with Legality matrix requirements, assessed against the SD-01 and CFHP audit checklists

This review has been updated under 7.3.10 in this Vol.2 (same heading).

6.4.6 Management of non-conformances under the VPA

This review was considered mostly completed in the previous report and has now been moved to under 7.3.13 in this Vol.2 (same heading) for archiving.

6.4.7 FDA field inspections (Commercial Forestry Dept.)

These reviews were considered completed in the previous report and have now been moved to under 7.4.1 in this Vol.2 (Implementation of the role of Government, CFD) for archiving.

6.4.7.1 Background from Audit 1

6.4.7.2 FDA's annual budgeting (and actual budget allocation)

6.4.7.3 FDA reporting and sanctioning protocols

6.4.7.4 Effectiveness of CFD field inspections and reporting

6.4.8 Documentation used by the Auditing section of the LVD

Status: This review can now be found under 7.4.6.3 in this Vol.2 (with the same heading) in this report, where it has been moved for archiving.

6.4.9 Other results from auditing against the SD-01 and CFHP Audit Checklists ('Pre-felling requirements')

This review has been further updated during Audit 4 with related information, however ***no new conclusions have been drawn below***. It shall be moved to under 7.4.3 (Approval of Forest Management operations (LM P4) - Pre-felling requirements) in the next report for archiving.

Useful references:

- In the previous Audit 3 report (A2R): 6.4.9;
- In the Audit 2 report (A2R): 6.4.8;
- In the Audit 1 report (A1R): 2.1.7 (in 2.1 Main C&Rs, derived from 6.2.2, themselves derived from the audit findings in 5.2.2, also in A1R).

From A1R, Other findings, conclusions and recommendations related to pre-felling requirements:

10) FMC "X" has not followed the *correct steps* described in the management guidelines *to prepare a long term (25 year) management plan*.

11) No company in Liberia is currently *preparing appropriate 5-year compartment plans*.

12) No company in Liberia is currently *completing all block surveys in the year prior to the new logging season*.

13) No *block planning* is currently being done as required in the Liberia CFHP.

14) *Annual harvesting plans* are thus incomplete, if available.

15) FDA is approving Annual Harvesting Certificates without evidence of fully completed *block enumerations* for the whole next logging season. Relates to 7.3.11.2 (Pre-harvest checks based on VPA Ann. II, 5.2b) and 6.2.1.3 (CFD control of LM Principle 4, Verifiers for Indicator 4.1) in this Vol.2. Other relevant mentions in this report, Vol.2: 6.4.9, 7.3.11.1, 7.3.12.2, 7.4.3.2, 7.5.2.1, 7.5.2.4, 7.5.3.2.

The above issues 10-15 are to be followed-up on during the next audits. Stakeholder comment: This is not the matter of absence of laws, but lack of will to enforce the existing rules (law enforcement issues due to lack of political will).

Recommendation: Enforce all the regulatory steps before an operator is allowed to start harvesting (not to mention before exporting with an Export permit).

The IA raised an **ISSUE** (Ref. **HII 7**) about this in the IA Progress DB:

ISSUE HII 7
Identified ISSUE: Regulatory steps before an operator can be allowed to start harvesting are not being followed correctly;
Recommendation: Enforce all the regulatory steps before an operator is allowed to start harvesting.

This also links to:

- The 'missing concession documents' issue below, that led the IA to register the ISSUE ref. **HII 25** (See below);
- The 'Review of the current issuance of Export permits' in 6.4.3, which led to the ISSUE ref. **HII 4** been raised (See 6.4.3).

Note: Issues HII 4, HII 7 and HII 25 are linked: the 'Missing documents' (**HII 25**) are part of the 'Regulatory steps that are not being followed correctly before an operator is allowed to start harvesting' (**HII 7**), for which 'Current log exports would not allow FLEGT Licenses to be issued' (**HII 4**).

Further IA action: One operator blamed the poor conditions of port infrastructure (especially in Greenville where a ship wreck was blocking the port), which they claim delayed the effective start of their operations by several years thereby they consider they are still in time for submitting their 5-year compartment plan. The IA needs to get better evidence for this issue as part of further auditing private sector stakeholders.

Follow-up during Audit 2:

Note re: Forest concession reviews (FCRs): related material (missing documents) moved back from 6.2.1.3 (CFD in the LM) to here, as part of the Pre-felling requirements and re: Concession reviews; to then (once completed) be archived under a Section 7 to be renamed after MC&R 3.9 FDA approval of pre-felling requirements?

Much of the documentation related to the original bidding process and the issuance of the concessions to the successful bidder is missing. This reason, alone, implies ongoing non-conformances related to the Legality matrix of operators, thus making it technically impossible to issue a FLEGT License in Liberia until this issue is resolved.

For SGS, the 'missing documents' Issue has been raised since 2013. These documents are those that are requested for pre-allocation of concession under P2. Examples include: social-economic survey, concession plan, tax clearance, debarment list, list of Gov't officials, performance bonds (90, 30 days before signature of contract). Are the concerned concessions operating legally? They have a contract but how was it delivered? The risk is that 5 or 7 years elapsed before the facts are eventually declared "prescribed". Suggested options: reconstruct the missing documents to regularize the contracts, if possible, or cancel the contracts, and declare an amnesty for the past? The decision belongs to the GoL and the JIC.

The **ISSUE** with ref. **HII 25** in the IA Progress DB about the missing concession documents - being monitored by the JIC (AMs, FP) - has now been updated as follows:

ISSUE HII 25
Impact level: High;
Identified ISSUE: Missing concession documents (concession plans, other prequalification documents, bid documents) implying ongoing non-conformances of operators to (legal/ Legality matrix) requirements for starting and maintaining operations;
Recommendation(s): Options for consideration by the JIC to address the issue: reconstruct the missing documents to regularize the contracts, where possible, declare an amnesty for the past, or cancel the contracts.

For future attention: The IA is not yet aware of the results and impact(s) of the Concession review on this issue in terms of follow-up and corrective measures adopted by the FDA/ JIC.

Extract from the 6th JIC (June 13-14, 2018) Aide-memoire:

- The EU raised concerns on the delays of FDA in moving forward on the missing document investigation exercise … [saying] if allocation documents cannot be traced, concessions are to be considered illegal. … during the technical JIC of August 2017, FDA had agreed to lead consultations within GoL for a cabinet-level attestation saying that despite these missing documents, current concessions are indeed considered legal. …the MoJ had been formally contacted on that matter … The EU reiterated the importance of FDA and MoJ pursuing this matter and asked FDA … how the attestation would link to the work of the Presidential Review Committee [or FDA's concession review]… The FDA committed to seek the attestation from the MoJ as agreed by the JIC (Introduction, 7);
- As the LRA further advised, FDA indicated that they have started scanning the available concession documents and agreed these will be made public. The FDA … emphasized that it "strictly enforces the legal requirements for all export permits and refuses export permits for the companies that do not meet the necessary requirements" (Introduction, 8).

The IA could have sampled more forest management contracts and permits for pre-felling requirements (See 7.5.3.3). The IA was however aware of the (then on-going) tendering 'process to establish the legality of Liberia Forest Sector, including complementary **review of forest concessions'** under the Liberia Forest Sector Project (LFSP) [28]. The objective was to conduct a review related to (i) the negotiation and awarding process of logging concessions contracts and agreements and (ii) implementation and enforcement of these contracts and agreements; it would also contribute to the design of solutions for a resolution process related to non-compliances in the forest sector. It would complement the reviews already conducted and has the potential to also create synergy with the Presidential Concession Review Initiative also in progress (below). The IA expected to be enabled to monitor and draw on the results from those very relevant initiatives. These 'Two ongoing, complementary forest concession review initiatives' were noted under 'Update of Progress, Mitigation/Corrective measure' in the IA Progress DB for Issue HII 7 since both concession reviews were interested in reviewing whether "the regulatory steps were followed correctly before the operators were allowed to start harvesting".

As per the IA's Second Six-monthly Report (June 2018), Chap. 3.3.2.5 (Monitoring report, Regulatory Reforms):

The President of Liberia has commissioned a **Presidential Contract Review Committee** charged with the responsibility to review all existing agreements, contracts and concessions signed by and between the Liberian Government and private sector firms. This objective of the review is to determine the legal validity of each of such contracts, its benefits to the country, and how it has performed relative to their terms.

The mandate of the Presidential Review Committee covers all Forest Management Contracts (FMCs) and Timber Sales Contract (TSCs) as well as other concessions in the mining, oil and other sectors of the Liberian economy.

The Presidential Committee has started its work.

The impact/risk of this Committee's work was said to be potentially high. Theoretically, this Committee may find a concession or contract invalid or that it does not represent reasonable value for money or that the concession is performing far below the standard (or making far less financial contribution to the government) as was agreed and stipulated by its terms. Any of such findings may lead to a call by the Government to renegotiate the concession or taking such action as may be warranted. Investors and other partners and stakeholders have expressed mixed reactions for the appointment and expected work of the Committee.

FDA/IAWG response to the Main R&C in the Audit 3 report:

Risk/ Issue: Concession reviews may find contracts illegitimate

Response: This is incorrect. All concession that have been ratified by the national legislature and approved into law by the President of the Republic of Liberia are legal. The Concession review is intended to look at the award process (not for purposes of invalidating the concessions) and the implementation of the contract to

[28] The World Bank-funded Liberia Forest Sector Project (LFSP) financed by the Government of Norway and benefiting the Government of Liberia through the FDA as Implementing Agency in the form of a grant.

determine possible regulatory actions, which may include termination of the contract for non-compliance.

Mitigation Measure: The outcome of the concession review will be adhere to by the management of the FDA, inline with law.

Responsible Department: REDD+/LFSP

Time Frame:

Reference: 6 months

Remarks: Liberia Concessions Review ToR for April 4, 2018

IA review of FDA/IAWG response:

- All concessions that were ratified by the national legislature and approved by the President of the Republic of Liberia were made laws. Can they later be found illegitimate (not meeting the initial conditions or intended purpose) or non-compliant? Based on the FDA/IAWG response, that all concessions are legal, and that the Presidential review is not intended to invalidate concessions but only to look at contract implementation for compliance, the IA reviewed the risk that "Contracts may be found invalid or undervalued":

  IA Legal review: It is true that the concession review is to look at both (i) the process of award and (2) the performance of the contract to determine if there are any significant issue of illegality in the award of process or with complying with the terms of each contract.

  Normatively, a review of an award process means that where the award was so illegal or affected by fraud the contract would be cancelled. That said, there is no evidence that the Presidential Review Committee has cancelled or recommended cancellation of any contract. It is therefore fair to accept what the Government has said - i.e. that no cancellation is intended.

  It should be noted that most of the contracts contain international arbitration clauses and also choice of foreign law or foreign forum. It would therefore be a sound strategic decision for the Government not to pursue cancellation as such act would /could be challenged by the contract holder, and this could lead to costly and lengthy arbitration or litigation outside Liberia.

- Risk HR 5 remains open, as now revised just below.

RISK (ref. **HR 5**) registered about this by the IA in the IA Progress DB (revised):

RISK HR 5
Impact level: High
Identified RISK factor: Reviews (i.e. the Presidential Review, and the complementary review of forest concessions under the Liberia Forest Sector Project) of all existing agreements, contracts and concessions signed by and between the Liberian Government and private sector firms
Identified RISK description: Contracts may be terminated for non-compliance
Recommendation(s): To the Government of Liberia not to pursue cancellation where such act could be challenged by the contract holder, and this could lead to costly and lengthy arbitration or litigation outside Liberia.

Note for future reports: The above findings about concession reviews relate to the LM Principle 1, 'Legal existence/recognition and eligibility to operate in forestry sector'.

***Further IA action** [TBC whether still relevant]:* The IA has been advised that the work of the Special Presidential Contract Review Committee is confidential and that the best approach to obtaining information about its work (if any effective in forest sector, which has not be the case?) and (any that can be shared, even in summary form?) findings to date is to formally write to the Chairman of the Committee who is the Legal Advisor to the President, Cllr. Archie Bernard.

Relevant extract from the **6th JIC (June 2018) Aide-memoire** (Introduction, 6):

- FDA's planned concession review under P1 (Legal establishment): the new President of Liberia has established a Special Committee to Review Concessions (across sectors). Because of (this), *FDA cannot pursue a parallel concession review exercise*. *The Consultant hired to carry out the FDA concession review was asked to work in coordination with the Special Committee*. The FDA also encouraged stakeholders and partners to connect with the team on the Special Committee to Review if they wish to see certain aspects included.

'VPASec Updates' on the version of the Forward Planner (FP) presented at the 7th JIC (February 25 - March 1, 2019) and not yet updated since then (therefore not taking account of eventual 7th JIC decisions)**.**

Regarding **Principle 1** and **Principle 2:** "Cabinet level attestation letter confirming the missing documents and "legalising" concessions to be signed and presented. Issue to be brought before the JIC again".

Reminder of **developments between 6th and 7th JIC** as per the FP:

- May 2018: "Steps agreed in August Technical JIC monitored in relation to missing documentation under Principles 1 & 2"
- Jun 2018: "Resolution from JIC on missing documentation based on letter from FDA MD"
- Oct – Dec 2018: "Letter of waiver prepared but letter missing at the level of MoJ. VPA Secretariat continues to facilitate this until the letter is signed".

For future attention: Available concession documents published on the FDA Website? Is the FDA statement not contrary to collected evidence (to be again confirmed through the planned sampling of EPs in 6.3.3.2)?

Regarding **Indicator 1.1** (recognized Contract holder): "LIC/GoL to advise on documents that are not uploaded on LiberTrace to be uploaded". For future attention: Which documents?

Reminder of **developments between 6th and 7th JIC** as per the FP:

- Oct – Dec 2018: "Following updates from the FDA, contract or permit holders are in compliance with Indicator 1.1. *The findings of the IA also indicates this as compliant on the basis of documents not uploaded on LiberTrace*".

  Note: Alleged IA findings should not be used without any clear reference and context. See ISSUE HII 35 raised in 6.2.2.2 (on inaccurate quoting of the IA).

Regarding **Indicator 1.2**: "Follow up needed at the JIC. A decision needs to be taken on what to do with this indicator and its verifiers as the list of prohibited individuals is still not available."

For future attention: Same issue as "Debarment list".

Reminder of **developments between 6th and 7th JIC** as per the FP:

- Oct – Dec 2018: "According to the FDA, no prohibited individuals are in the shareholder list of companies. This is verified from company documents at FDA with names of individuals that are shareholders.
  However, *according to the findings of the IA, this is not the case:*
  - a notarised affidavit by the CEO declaring that prohibited individuals are not shareholders is still missing from Libertrace
  - FDA prepared list of senior gov officials prohibited from holding forest licence persuant to art 5.2 of NFRL is still missing
  -List of shareholders is also not uploaded into LiberTrace".

  Note: Alleged IA findings should not be used without any clear reference and context. See ISSUE HII 35 raised in 6.2.2.2 (on inaccurate quoting of the IA).

Regarding **Indicator 1.3**: "Liberia JIC to take a decision about the publication of the PPCC debarment list. A reference should be made to the vendor register of the PPCC. Guidelines for filling the PPCC Vendor register states "Only businesses, companies, and individual consultants listed in the Vendors Register will be eligible to participate in public procurement effective fiscal year 2015/2016 which begins on July 1, 2015".
Additionally the PPCC website publishes all approved procurement contracts above 100K USD. http://vr3.ppcc.gov.lr/index.php?option=com_sobipro&sid=1656&Itemid=134 this can serve as a base to review that all prohibited individuals are not part of the concession contract".

For future attention: "PPCC"? Scope of Debarment list? Difference with Indicator 1.2? Other related findings?

Reminder of **developments between 6th and 7th JIC** as per the FP:

- Oct – Dec 2018: "According to FDA - Contract holders are not barred from bidding because of breach of the PPCC Act.
  According to IA this information still need to be uploaded onto LiberTrace. The PPCC debarment list is missing".

  Note: Alleged IA findings should not be used without any clear reference and context. See ISSUE HII 35 raised in 6.2.2.2 (on inaccurate quoting of the IA).

Regarding **Indicator 2.2** (Concession Certificate): "JIC decision to fast track the fulfillment of this indicator and associated verifiers for existing companies. This is linked with the discussion on the Cabinet-level attestation."

Reminder of **developments between 6th and 7th JIC** as per the FP:

- Oct – Dec 2018: "According to FDA, all operators are operating in full compliance of the liberian law. *The IA findings indicate that Concession certificates and Concession plans are no uploaded on LiberTrace".*

  Note: Alleged IA findings should not be used without any clear reference and context. See ISSUE HII 35 raised in 6.2.2.2 (on inaccurate quoting of the IA).

Regarding **Indicator 2.3** (prequalification requirements) and **Indicator 2.4** (competitive bidding process): "JIC decision to fast track the fulfillment of this indicator and associated verifiers for existing companies. This is linked with the discussion on the Cabinet-level attestation.
Indicators not activated in LiberTrace need to be activated."

Reminder of **developments between 6th and 7th JIC** as per the FP:

- Oct – Dec 2018, regarding **Indicator 2.3**: "FDA confirmed that some of the prequalification certificates required under this indicator exist and as valid as up to 2021. However, *the IA could not confirm this compliance and could not find as uploaded on LiberTrace the following documents:*

- Report of the prequalification committee regarding the prequalification process
- Valid pre-qualification certificate issued to the contract holder
- Tax clearance showing no tax arrears at date of submission
- Liquidity guarantee from reputable bank at date of submission
- Business registration certificate predates pre-qualification certificate

Additionally some non compliance discovered by IA could be associated to indicators not activated in LiberTrace."

- Oct – Dec 2018, regarding **Indicator 2.4**: "FDA Confirms that this indicator is fully implemented but *the IA found all verifiers non complied with. This can also be because at the time of audits, these verifiers were not activated on LiberTrace. Need to follow up with SGS to know this.*"

  Note: Alleged IA findings should not be used without any clear reference and context. See ISSUE HII 35 raised in 6.2.2.2 (on inaccurate quoting of the IA).

Regarding **Indicator 2.5** (PUP awarded with land owner permission): "JIC decision to update the LM and require keeping indicators of the Liberia legal framework that are currently being implemented."

Note: This also relates to PUPs, to JIC decision to update the LM, and to indicators not activated in LiberTrace.

Reminder of **developments between 6th and 7th JIC** as per the FP:

- Oct – Dec 2018: "PUP are not being issued until the revision of the laws on PUPs have been finalised*".*

Regarding **Indicator 2.6** (FDA contract area map): "VPA sec to follow up with FDA for more details"

Note: This relates to an issue not yet specifically raised as such by the IA.

Reminder of **developments between 6th and 7th JIC** as per the FP:

- Oct – Dec 2018: "*according to IA, this is not complied with as there are no documents uploaded on LiberTrace to this effect. This indicator is not activated on LiberTrace.* VPA sec to follow up with FDA for more details*".*

  Note: Alleged IA findings should not be used without any clear reference and context. See ISSUE HII 35 raised in 6.2.2.2 (on inaccurate quoting of the IA).

Regarding **Indicator 2.7** (bidder's bond): "JIC to decide on prequalification requirements (linked with discussion around Cabinet-level attestation)".

Note: This relates to an issue not yet specifically raised as such by the IA.

Reminder of **developments between 6th and 7th JIC** as per the FP:

- Oct – Dec 2018: "According to FDA all contract holders are operating legally. However, FDA is unable to proof existence of Bidders' bond. They inform that it cannot be traced."

Regarding **Indicator 2.8** (initial performance bond): "VPA sec to follow up with SGS to upload these documents on LiberTrace".

Note: This relates to an issue not yet specifically raised as such by the IA, but also relates to documents not uploaded on LiberTrace.

Reminder of **developments between 6th and 7th JIC** as per the FP:

Oct – Dec 2018: "*According to the IA wrong document uploaded onto Libertrace – dated May 2016 instead of the performance bond issued at the time of the bidding process. This needs to be corrected. FDA disagrees and reminds that FDA Performance bonds are issued yearly and this is done accordingly.*"

Note: Alleged IA findings should not be used without any clear reference and context. See ISSUE HII 35 raised in 6.2.2.2 (on inaccurate quoting of the IA). *In case of stated disagreement with the IA, a specific comment to the IA report should also be sent to the IA asking for a formal response.*

Reminder of **developments between 6th and 7th JIC** as per the FP:

- Oct – Dec 2018, regarding **Indicator 2.9** (forest contract signed): "This indicator is fully complied with *in accordance with* both *IA* and FDA *information".*

  Note: Alleged IA findings should not be used without any clear reference and context. See ISSUE HII 35 raised in 6.2.2.2 (on inaccurate quoting of the IA).

Extract from the 7th JIC (February 25 - March 1, 2019) Aide-memoire on '**Legality of Liberia´s forest concessions (Principles 1 Legal existence and 2 Forest allocation)**'

> 6. The Ministry of Justice indicated that at the last JIC meeting in June 2018, the parties had asked that the Government of Liberia make a decision on *how to proceed with the legality of current concessions, considering the missing documents around concession allocation*. This is important to establish in working towards FLEGT Licensing, as concession legality is linked to Principles 1 (Legal Establishment) and 2 (Forest Allocation). The FDA previously wrote to the Ministry of Justice requesting an attestation from the Government on the legality of these contracts. The Ministry of Justice informed the JIC that they are still conducting this review and will relay a decision to the FDA as soon as possible.
>
> 7. A representative from the FDA presented on the *status of the Concession Legality Review* and discussed how conducting this review, will link to the work of the President's Special Committee to Review Concessions. FDA is already engaging with the Presidential Committee to offer its resources and to support the overall process. *The recruitment process is ongoing and the expectation is that the LFSP selected firm will start its activity by the end of March*. FDA expressed its commitment to this process and confirmed that they will provide an update on the situation after the meeting in early March, between the LFSP and the Presidential Committee. FDA highlighted that the Letter of Intent between Norway and the Government of Liberia is being implemented from 2015-2020, so this means that *the concession review needs to occur promptly*, while funds are still available.
>
> 8. The EU expressed its satisfaction to see that this process is finally moving forward but highlighted that it is important to learn from the mistakes of the past and to ensure that from now on, *all new contracts including Community Forest Management Agreements (CFMA) be duly registered and that relevant documentation be well archived*.
>
> FDA supported this view and indicated that during 2018 they uploaded a large volume of documents to the FDA website. This increased the volume of data on the FDA website, and this was one of the reasons that the website shut down.

*Follow-up during Audit 4 on **pre-felling requirements**:*

'VPASec Updates' on the 7th JIC version of the Forward Planner (FP) (February 25, 2019), not yet taking account of eventual 7th JIC decisions

Regarding **Principle 4** (FOREST MANAGEMENT OPERATIONS AND HARVESTING), **Indicator 4.1** (annual operational plan completed, and where applicable a forest management plan) and **Indicator 4.2** (compliance with legal and AOP requirements on harvested species and quantities): "*IA WG to coordinate with FDA/LVD and companies to locate and upload documents in to LiberTrace.*"

Note: Should it be expected that the IAWG becomes an implementer of corrective measures?

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issues, regarding **Indicator 4.1**:

- Jul 2018: "FDA staff capacity on AOP assessed, using matrics in the Dashboard*".*
- Aug 2018: "Review AOP process with operators and FDA to capture any lessons to further embedding AOP into these organisations. In collaboration with SGS support Private Sector companies active in Region 3 to identify non-compliance issues identified through LiberTrace roll out, and provide training and guidance on processes and procedures that will help operators to address non-compliance.*"*
- Sep 2018: "Further training to FDA on approval process of AOP including the use of procedures for block and AOP approval including field validation (in Region 3), and verification of forest maps submitted by forest operators, and that procedures for AOP are institutionalised.*"*
- Oct – Dec 2018: "According to the FDA, all 4 verifiers under this indicator have been completed (Annual harvesting certificates, approved AOP, approved Forest Management plans, Written permision from Landowner-considered as integrated in the socio-economic survey-).
  IA disagrees as they did not find these documents in LiberTrace."

  Note: Alleged IA findings should not be used without any clear reference and context. See ISSUE HII 35 raised in 6.2.2.2 (on inaccurate quoting of the IA).

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issues, regarding **Indicator 4.2**:

- Oct – Dec 2018: "FDA confirms that two out of 4 verifiers have been are complied with; that is Approved annual blocks and Felled trees data verification (SOP 11). Verifiers on compartment ad annual coupe and FDA annual audits reports are still not complied with. The FDA indicated that the process of annual report is not ongoing
  The IA observed that all the verifiers in this indicator were non compliant.
  **On Verifier - Annual bloc approval; it was observed that, Block approvals do not meet the requirements stipulated on page 6 of « Review of Annual Operation Planning and Approval Process for Sustainable Management of Commercial Forest Areas, dated 24.01.2017».*
  **On compartment and annual coupe: There is currently no compartment and annual coupe that exists for the Contract Holder that meets the requirements stipulated in "Guidelines for Forest Management Planning in Liberia" dated July 2009.*
  **Annuual audit reports not being prepared."*

Note: Alleged IA findings should not be used without any clear reference and context. See ISSUE HII 35 raised in 6.2.2.2 (on inaccurate quoting of the IA).

Extract from the 7th JIC (Feb. 25 - March 1, 2019) Aide-memoire:

Validation of Annual Operation Plans

14. The FDA provided an overview on forest management planning in Liberia explaining the 25-year Strategic Forest Management Plan, the 5-year Management Plan as well as the Annual Operation Plan (AOP) including the relationship between these documents.

15. AOP is reviewed based on a template derived from the FDA Forest Management Guidelines. The completeness of the plan is evaluated considering several factors as stipulated in the Code of Forest Harvesting Practices and cross-checking information with the Chain of Custody System and other information in LiberTrace. In the event of any shortcomings, AOPs must be corrected by the proponent (Contract holder). The FDA Managing Director then approves the AOP, and thereafter a harvesting certificate is issued to the operator/company.

For future attention: Confirmation needed that such a template exists to review all AOPs.

16. During the period 2018-2019, the FDA approved 6 AOPs and reviewed 7 Forest Management Plans for CFMAs. Commenting on the presentation, the FDA and he EU emphasized the importance of sustainable forest management and the need to ensure the long-term protection of Liberia's forest resources. Both the EU and FDA stressed the need to reflect on the rationale and appropriateness of the difference in time periods that apply to concessions (25 years) in comparison to CFMAs (15 years). The future EU VPA support project will support this work.

6.4.10 Functionality of the COCIS software (LiberTrace)

Status: This review can now be found under 7.4.7.1 (with the same heading) in this report, where it has been moved for archiving.

6.4.11 Implementation of the role of Government departments, Data management by the LVD, Incorrect information loaded on LiberTrace

Status: This review can now be found under 7.4.6.5 (with the same heading) in this report, where it has been moved for archiving.

6.4.12 Review of the current issuance of Export permits

Status: This review can now be found under 7.5 (with the same heading) in this report, where it has been moved for archiving.

6.4.13 Inconsistent enforcement of Legality Matrix requirements / Many requirements of the LM not currently verified

Status: This review can now be found under 7.4.12 (with the same heading) in this report, where it has been moved for archiving.

6.4.14 Efficiency of border control

This review has been further updated below during Audit 4 with related information and to review the FDA/IAWG response to the Main R&C 3.27 in the Audit 3 report, however ***no new conclusions have been drawn***. It could therefore be moved to a new chapter to be created in Section 7.4 in the next report for archiving.

Useful references:

- In the previous (Audit 3) report: 5.1.3.2;
- In the Audit 2 report: 3.19, 5.1.3.2, 6.1.2.5 and 7.1.2.1.

6.4.14.1 Track record of activity

Information request

19.12.2017: email sent to SGS/LVD, FDA, and VPASU (Cc: SGS, EU, DFID, IA)

The VPA Art. 8,1b requires the Legality Assurance System (LAS) to ensure that only shipments verified as legal (i.e. legally produced or acquired) are exported to the Union.

The IA criteria included:

- COCS ensures that the shipments exported are those that have been verified / no unverified shipments are exported.
- "Shipping" also to include terrestrial border crossing.

The questions below are those that were sent to key stakeholders during Audit 1 and followed-up on during Audit 2. The results of this preliminary investigation are also compiled below. The IA keeps records of the detailed investigation under this VPA Art. 8,1b.

6.4.14.2 Outcomes

Question 1: ***Does the COCS cover the export supply chain, all the way down to the loading onto ships…?***

Result/Conclusion: The IA is satisfied with the evidence provided or gathered, that the COCS covers the export supply chain, including the loading onto the ship. Risk is therefore minimal of unverified, therefore potentially illegal shipments (through "dilution" between port log yard and dock, uncontrolled ports, or trans-shipment), that products be loaded in addition to those on the Export Permit (EP), or that different products than those on the EP be loaded.

Question 2: ***What official documents are issued … to describe what is in fact loaded onto the ship, and respectively what is verified on the port log yard after cross-cutting?***

Result/Conclusion: The IA is satisfied with the evidence provided or gathered that official documents are used to attest the actual loading and the prior verification of the ID and physical description of the products (Export Permit Request (EPR), Export Permit Inspection Form/Report, Export Permit (EP) and SPEC, Loading Request/Report). This is governed by relevant SOPs in the LVD Manual of Procedures, particularly SOP 23 'Export Permit Verification' and other related SOPS (22, 26).

Any discrepancy between the Loading Registration Form and the Bill of Lading (B/L) is normally corrected in agreement between SGS/LVD and the Operator:

- The BL is a proof of ownership and recognition of loading from the shipping line. Before closing an EP SGS/LVD request the BL. The Operator has a strong incentive to provide the BL because unless the EP is closed it will not be possible to request a new EP for an SSH (short-shipped) log. Are there cases where SGS/LVD is not provided with the B/L*? What could this hide?

  ** Follow-up with SGS/LVD during Audit 3:* Yes, not systematic, possible if they do not need it [IA understands: do not need to provide SGS/LVD with it, which is the case if:] (i.e. Certificate of origin not requested in the Buyer's country, as some countries import tax free from poor DCs).

  But LVD will request it [systematically in future?] (and will block short-shipped for future EPs and block Certificate of origin / FLEGT License in future).

  Any instances of logs not registered in the COCS found on the B/L? B/L only provides total volume and no. of logs (not per EP); must match, and mismatches must be explained, e.g. because of declared vs. inspected information retained for the EP; if volume or no. of logs greater than the ones declared loaded in LT: always gets fixed, never logs appear on the B/L out of the blue, that were not registered in the COCS.

  There are two cases:

  1. Volume in BL higher than Loading registered in LiberTrace, i.e. a log is marked SSH in LiberTrace but not for the Operator: SGS/LVD identify the log concerned with the Operator; if the latter confirms the loading then the log is marked loaded*. It will not possible to include this log (tag) in a new EP.

  2. Volume in BL is lower than loading registered in LiberTrace, i.e. a log was not registered as SSH in the loading report*: SGS/LVD will only close the EP when the logs concerned are identified as SSH in the log yard.
  * Note: against the loading report, suggesting that errors are possible.

  Or it would occur beyond the B/L [For future attention: any possible instances of logs loaded and not on the B/L?].

  This review of the B/L must be complemented for future attention with the one under 6.2.3.8 (Audit of a container loading inspection by LVD during Audit 4) in the Volume 1 of this Audit 4 report (A4R Vol.1).

Question 3: ***What ports are being used, for shipping which types of timber products, and how (as Logs, or as Processed wood products (PWPs), containerized or not, allowing self-loading ships (equipped with their own cranes) or not) in Liberia?***

The ports that are being used in Liberia to ship timber products for export are the following, all reportedly covered by the COCS (with Yes/No for products and activities that take place or not):

Provisional result: below understanding.

Table 3: Ports that are being used in Liberia to ship timber products for export

Ports covered by the COCS	*Logs (in bulk) (Y/N)*	*PWPs (not containerized) (Y/N)*	*Containerized logs or PWPs (Y/N)*	*Self-loading ships only (Y/N)*
Free Port of Monrovia	N	N	Y	Y
Buchanan	Y	N	Y	Y
Greenville (Sinoe)	Y	N	Y	Y
Pedebo (Harper)*	Y	N	Y	Y

* Vessel cannot berth at Harper; logs/PWPs must be transferred by barge or floating (SGS/LVD 180716)

Provisional conclusion: The IA acknowledged the information provided and was satisfied with that all ports are reportedly covered by the COCS.

The IA had however noted for further investigations after Audit 1 that 'Containerization and Self-loading ships' (esp. where transshipment occur at sea from rafts of floating logs or barges to ships – As per Qu. 4.2 below) create control challenges and, therefore, risks of illegality.

Following the IA's inquiry into the issue, SGS/LVD updated the SOP 24[29] to address the loading inspection and sealing of containerized products.

This review of border control in the case of containerization must be complemented for future attention with the one under 6.2.3.8 (Audit of a container loading inspection by LVD during Audit 4) in A4R Vol.1, which revealed a number of issues. One of the issues is the need to further improve the LVD SOPs in that regard.

Question 4.1: ***Are there any substantial risks that timber can be shipped illegally either by entering the supply chain unchecked, between the port log yard and the loading dock?***

Result/Conclusion: The IA is satisfied with the evidence provided, that the risk is minimal that products could be loaded in addition to those on the Export permit (EP), or that different products than those on the EP might be loaded.

The LVD SOPs for LVD staff provide the procedure. From further explanations received, there is no "mixed team" and "joint reporting" as such, the other "Informed" parties mentioned in SOP 26.1 (EXP, PA) "are just taking the report for their own" while other institutions "acting in parallel" attend the loading to check the paperwork for their "own records"; and a meeting is called by the Port Authorities before departure of the vessel to reconcile loading inspection data from the main actors' (Operator, Buyer, Vessel, LVD). For the SGS LVD Manager, this only occurs in Buchanan, though; all other ports have different procedures that do not include such data reconciliation. Subject to verification, this was denied by the LVD Operations Manager asserting that the same procedure applies to all ports.

[29] Manual of Procedures for LVD staffs (V2.2 of 07.17.2018 "Updated after Independent Auditor comments"; not yet approved), 24.2 Work Instruction: Loading Registration and Inspection, 24.2.1 Loading Inspection

The IA also suggested checking the SOP 26.1, Step 4, where Conducting Loading Inspection is 'Executed by' LI (Lead Inspector) and 'Approved by' I (Inspector), whether it is not the other way around or a different approval procedure. This has been corrected in the new version of the SOP.

Question 4.2: ***Or in some ports where there is no control, or transshipped at sea from small boats to bigger ships?***

Result/Conclusion: The IA is satisfied with the information provided, indicating that such risk is indeed minimal for all ports, except Harper*.

*Further investigation regarding Harper: ***Is there not an increased risk, however, in the particular case of Harper where vessels cannot berth, and transshipment therefore occurs at sea from rafts of floating logs or barges to self-loading ships*** *(SGS/LVD 180716)****, of uncontrolled/illegal loading? What is in place to reduce such risks?***

Result: SGS/LVD further add (180730, 0801) that "there is and will always be a risk, since the borders are not fully and permanently controlled by Customs/Police/etc.", although "the absence of cranes at the port (provides) a "natural protection". (…) If a vessel loads logs in Greenville then stops in Harper to load logs or timber products without EP (thru Barge or floating) it is smuggling and not within LVD purview. Customs or coast guards should stop them".

Note: The IA Auditors were not able to reach Greenville during Audit 4 (flight was full).

Based on the above analysis, the IA registered a **RISK**, referenced **MR 2** in its Progress DB during previous audits:

- Risk level: Medium (subject to further assessment of the risk).
- Identified RISK factor: Vessels cannot berth in Harper, and transshipment occurs at sea from rafts of floating logs or barges to self-loading ships, left to Customs/ Police/ Marine control.
- Identified RISK description: Uncontrolled/Illegal loading of ships by barge or raft (without EP) ashore Harper (and possibly other places?).
- Update of Progress, Mitigation/ Corrective measure: investigate with VPASU about capacity building of Customs/Police/Marine.

FDA/IAWG response to the Main R&C in the Audit 3 report

Risk: Risk of illegal loading of ships ashore e.g. Harper (transshipment at seen)

Response: The FDA rejects the the unfounded "theoretically risk" identified by the auditor in Section 3.27 of the Audit Report. To our knowledge, the Auditor has never visited Harper to verify this theoretical assumption. FDA request that this section be removed from the Audit Report unless the Auditor can provide evidentiary support for this assumption.

Mitigation Measure:

Responsible Department: LVD & Commercial

Time Frame: Ongoing

Reference:

Remarks: All Exports through the Ports are controlled by the FDA, LRA, Custom, MoL, MOA, and NPA

IA review of FDA/IAWG response:

- The potential risk of transshipments occurring at sea without EP and without (e.g. Customs/ Police/ Marine) control exists and is not within FDA/LVD purview. FDA/IAWG response provided no mitigation measure.
- The (limited) export control exercised by the LRA has been reviewed under 6.2.6.3 (LRA, Government forestry revenue collection) in A4R Vol.1. It does not mitigate the identified risk.
- Risk MR 2 shall remain open until the IA Team has an opportunity to visit Harper to assess the risk/issue and/or receives evidence of the contrary (i.e. of no risk).

SGS/LVD (180801) also brought in an important clarification regarding their perceived role, which is only to check the loading of *declared exports verified as legal (i.e. products on an approved EP)*: "*LVD doesn't deal with smuggling issues*. The system in place aims to give *reasonable assurance that the logs/timber products covered by the FLEGT License* [therefore the EP, in the interim (Note from the IA)] *are legal. … the LVD is present for the loading of the EP approved by LVD. Timber products not in the EP will however be rejected"*.

Further IA action: *That LVD is only responsible to check the loading of declared exports verified as legal (i.e. no policing role) is assumedly correct, but it would need to be specifically assessed further against relevant evidence (in SGS' LVD capacity building ToR, LVD SOPs).*

Question 5: ***As the LAS actually covers exports to all countries; please answer the same questions as per Qu.4.1 and Qu.4.2 above after replacing "loading dock" and "port" by "terrestrial border-crossing point" (and "ships" by "trucks").***

Result/Conclusion: The answer provided (SGS, 180111) describes the (unique) case of (only) "one operator who applied for an export to Côte d'Ivoire by container (i.e. by truck) through Pedebo, a crossing point to CI near Harper. Customs are in charge to control the borders; and are supposed to have been trained (by VPA SU)". This indeed suggests that (from Qu.1) the COCS covers the export supply chain all the way down also to *terrestrial* border-crossing points. However, "LVD cannot maintain a permanent presence at all export points and relies on other agencies (Customs) to be alerted if logs are exported. In such case the LVD will send a team to monitor the Export" (SGS, 180716). Risk mitigation therefore very much depends on reliable Customs' surveillance of the border crossings.

Like for the risk of uncontrolled/illegal loading to ships ashore Harper, SGS/LVD's comment that "there is and will always be a risk, since the borders are not fully and permanently controlled by Customs/Police/etc." also applies to *terrestrial* border-crossings except where "because of the road conditions (sometimes there is no road), there is a "natural protection". But "LVD doesn't deal with smuggling". (…) "Smuggling (is) not within LVD purview. Customs … should stop them"".

The IA therefore registered a **RISK** about this, referenced **MR 3** in its Progress DB:

- Risk level: Medium (subject to further investigation).
- Identified RISK factor: All terrestrial border crossings are not fully and permanently controlled by Customs/Police/etc.

- Identified RISK description: Smuggling through unmanned terrestrial border-crossing points (without EP).
- Update of Progress, Mitigation/ Corrective measure: investigate with VPASU about capacity building of Customs/Police and resulting border control capacity being fully effective and reliable (or remaining vulnerable to e.g. corruption issues).

Question to be asked to VPASU for further investigation: Qu.5 + capacity and presence of Customs/Police.

Conclusions

Risk is minimal that actual shipments exported may be different from the products that were verified, or that unverified shipments are exported from the main ports of Liberia. These ports are all reportedly controlled by the COCS, which covers the export supply chain up to the loading onto the ships. This includes prior logyard inspection or prior loading inspection into containers – where applies - and also a ship loading inspection that is attended by most actors and concerned government bodies.

However SGS/LVD will only check the loading of *declared exports verified as legal (i.e. with an approved Export permit)* and do *not deal with smuggling issues.*

A risk therefore exists of uncontrolled/illegal loading of ships by barge or raft (without EP) ashore Harper and maybe other places where vessels cannot berth and transshipment occurs at sea from rafts of floating logs or barges to self-loading ships. A risk also exists of smuggling through unmanned terrestrial border-crossing points (without EP). These situations rely on efficient border control by relevant by Customs/ Police/ Marine authorities.

Further IA action:

- Inquire into, and possibly witness loading onto ships at ports (Plus it might have to be clarified with VPASU for the other government bodies involved).
- Inquire for places where transshipment occurs at sea from rafts of floating logs or barges to self-loading ships and for unmanned terrestrial border-crossing points.
- Also inquire about the current capacity of Customs/ Police/ Marine authorities to exercise efficient border control and about perceived risks of smuggling.

Follow-up during Audit 3:

Due to the bad climate and road conditions, no loading operation of containers or vessels took place in Monrovia or Buchanan during Audit 3 for the IA to witness as requested.

Follow-up during Audit 3, whether the risk of smuggling also applies to timber imports from third countries into Liberia:

- Interview with the FDA DMDO:
  - Borders are mostly rivers. The DMDO is not aware of any crossing without a bridge. Where there is a bridge, it is manned by securities (Customs) on both sides.
  - For future attention: a MoU is reportedly being negotiated with the Government of RCI, and a Transit regulation for trucks to cross is being vetted & approved (VPA).

- Not aware of imports.

- Interview with the SGS/LVD Project Manager (which actually relates more to any legal imports):
  - Not aware of any imports; there is zero data.
  - The COCS is ready for it, but there has never been any, either in transit or for processing and re-export or local consumption.
  - Recognized legality certification from the third country must exist.

For further attention, **review of relevant SOPs** [30] (SOP 22 'Export Permit Verification', 23 'Export Permit Issuance', 24 'Loading registration and inspection':

22. Export Permit Verification (EPV)

- 22.1 SOP: EPV "is critical since it is the ultimate control point before the issuance of FLEGT Licenses".

- 22.1 Step 1: "LVD receives EPR (Export Permit Request) from Exporter. EPRs are available on LiberTrace".

- 22.1 Step 3: Following automatic data reconciliation by LiberTrace, "The Operations Manager (OM) decides whether a physical inspection shall be conducted (as per criteria defined in the work instruction: wood products not inspected yet, risk of fraud, need to confirm previous values, any other relevant reason)".

  IA: Therefore a physical inspection (Export Permit Inspection / Form, by CoC Inspectors) is not systematic and there can be an element of subjectivity to decide not to do it. Same for Decision making where Exporter approval is required to resolve discrepancies.

- 22.2.3 4) On-site Inspection: "The inspection team does not have access to the data declared by the Exporters. The *Export Permit Inspection Form* only provides the list of the Barcode Tag numbers of products to be inspected."

  Note: This is not what as observed during through the 'Audit of a container loading inspection by LVD' (6.2.3.8).

- 22.2.3 4): "… In case of products in bulk [not itemized each with a BC tag], the Lead Inspector prints the type and description of the wood products to be inspected but not the volume (and eventually the number of pieces) declared by the Exporter."

- 22.2.3 4): "On arrival at the site, the COC inspectors performs the inspection which includes: ▪ Verifying that the products to be inspected have the correct Barcode Tag". Hence no products without a BCT, to the extent the inspection is reliable.

- 22.2.3 6): For Pre-approved products (by LT), if "1: Product meets the conditions [declared & inspected data within the tolerances], LVD follows LiberTrace's recommendation"; however there is the possible case that "4: The product does not fulfill the conditions but FDA/GOL recognizes good reasons to not follow the inspection results (i.e. deteriorated timber, tax relief)".

23. Export Permit Issuance

[30] In LR_Manual of Procedures LVD staffs_V2.2_2018.07.17 (pending approval)'

- 23: “The EP issuance is a pre-requisite for the calculation of Export fees and the issuance of Certificate of Origin and FLEGT License”.
- 23, Step 6: “Until the LLD is operational, EPs are signed by both TM of LVD and FDA MD”.

  IA: This does not match with the finding in (???) which therefore, if confirmed, would not be in line with the SOP. See also 23.2.6.
- 23.2.1, “Note: If the National Authority (MD-FDA) insists to issue an EP although the traceability or legality requirements are not met, all the supporting documents (letter from the authority) must be uploaded in LiberTrace. (+ No FLEGT license can be issued for the shipment of such logs.)” For further attention: Always the case? See also 23.2.3.
- 23.2.2.1, Legality: Wood products that are not compliant with the legality definition shall not be authorized for export. ➢*Before the activation of the VPA, the legality status is checked but is not blocking*. The results are discussed between the LLD (or LVD) and Exporters in order to raise the awareness of Exporters in terms of legality and remind them that as soon as the VPA is activated they will not receive Export Permit if there are non-compliant verifiers in the legality matrix”. For further attention: origin of WI?
- 23.2.8 “Requirements for EPR submission and archiving for internal and third-party audit” includes: “Evidence of issuance [by LVD?] and receipt [by the Operator?] of Export Invoice, Export Permit and Certificate of Origin upon reception of a copy of the corresponding Bill of Lading.”

24. Loading registration and inspection

Note: Where it says “vessel”, it is said to also apply to container loading (SGS/LVD).

- 24 Loading registration and inspection, 24.1 Standard Operating Procedure, “Purpose: Guide the LVD COC staffs in the registration and inspection of timber products that are really loaded on a vessel and ready for export outside of Liberia.”
- 24.1, “Scope: The wood products loaded on a vessel must come from Export Permits approved by the FDA. As soon as the wood products are loaded they are registered as exported and therefore are exiting the supply chain; they cannot be reused for any other activities. The wood products that are not loaded may be registered in LiberTrace as short-shipped and remain available for another EP or any other activity of the supply chain.”
- 24.1, Step 4, Conducting Loading Inspection: “The Lead Inspector completes the Loading Registration Form by registering the loading date, eventual comments and the status of each product: Loading done, Not loaded or Loading refused (in this case a comment is mandatory).

  For future attention: Check the observations from the ‘Audit of a container loading inspection by LVD’ (6.2.3.8) against the procedure and validate the comparison and findings with the LVD OM. See picture of form (only manual? Results can be seen in LT on Loading Inspection Request?), log BC nos. per container, container no., Seal no.? Observation: Procedure is poorly developed for containers. CoC actually stops there for LVD. Then container is sealed and truck goes with the co. waybill. So no vessel loading inspection takes place,

this container loading inspection replaces it. LVD will not follow up, unless Customs would come and ask for the container to be opened (seal broken, replaced) which has never happened. TBC

- 24.1, Step 6 Validation of the loading: “After loading the OP shall provide the Bill of Lading. OM checks the volumes loaded vs BL and validates the loading”.

  Note: Applies to container loading? No, BL not received yet from the Co. So, OM can only do it later.

- 24.2.1, Loading Inspection: “In the specific case of loading thru containers, each wood product (recorded on an Export permit/SPEC) is checked before loading as well (exactly the same/consistency as the loading in vessel above), and the container is sealed once it’s full. The seals are provided by the maritime company in addition a certified agency like SGS could provide its seals. At the end of the loading thru container, the report is managed exactly as it’s done with the loading at the foot of the vessel. The seals numbers are recorded (shipping company and SGS).

  Note: before approval of the loading inspection report by the Operation Manager in LiberTrace, he must check the accuracy between the field report, the bill of lading and the reconciliation report. Applies to container loading? No, BL not received yet from the Co. So, OM can only do it later.

- 24.2.3 Pre-requisite: ➢The Export Permit has been approved by the LLD/LVD ➢The bill of lading is available”.

  Note: Same as above.

- 24.2.4 Instructions, 4) Completing and Submitting the Form: ➢At the port the Exporter, Buyer, NPA, FDA and LVD reconcile the loading the report is counter signed by all participants.

  Note: Applies to container loading? No, at the timberyard where the containers were loaded on 191028, only the Exporter and LVD were present, and FDA sent a regional LED Officer (*), but no Buyer or NPA or else.

  *Will send all September reports to MB. Not clear at all what addition she was there to make, not checking by herself, only collecting copies of the LVD forms.

- 24.2.4, 4) ➢The Lead Inspector cross-checks the consistency of the loading inspection with the Bill of Lading, held by the Export or Forwarding Agent (number of logs loaded, volume, destination, vessel name) at the port or back at the LVD office in Monrovia”.

  Note: Applies to container loading? No, BL not received yet from the Co. So OM can only do it later.

- 24.2.4, 5) “After uploading in LiberTrace the OM checks the volume (B/L vs Loading report) and approves the Loading inspection”.

  Note: Same as above.

The review continues under 6.4.14 in the Volume 1 of this Audit 4 report (A4R Vol.1). as followed-up during Audit 4.

6.4.15 Reporting on law infringement, enforcement of sanctions, and public disclosure of related information

This review has been further updated below during Audit 4 with related information and to review the FDA/IAWG response to the Main R&C 3.28 in the Audit 3 report, however ***no new conclusions have been drawn***. It could therefore be moved to a new chapter to be created in Section 7.4 in the next report for archiving.

Useful references:

- In this Audit 4 report: 5.1.3.4 in Vol.2, and 6.2.4.2 (LED) and 6.2.4.3 (PAD) in Vol.1;
- In the previous Audit 3 report: 5.1.3.4, 6.2.4.2 (LED), 6.2.4.3 (PAD);
- In the Audit 2 report (A2R): 6.4.6;
- In the Audit 1 report (A1R): 2.1.5 (in 2.1 Main C&Rs, derived from 6.1.1.7 and 6.1.2.1, themselves derived from the audit findings in 5.1.1.7 and 5.1.2.1).

Art. 22,1 states "Each Party undertakes, within the limits of its laws, not to disclose confidential information exchanged under this Agreement. Neither Party shall disclose to the public, nor permit its authorities involved in the implementation of this Agreement to disclose trade secrets or confidential commercial information exchanged under this Agreement".

Subject and pursuant to Article 22,1, **Art. 22,2d** clarifies "the following *information (NOT TO) be considered confidential*", which includes:
(d) Monetary fines imposed or regulatory action taken against any contractor (or FLEGT license-holder, in due course).

Furthermore, the IA is so far aware that the **VPA Annex IX** "describes the information to be published by the GoL or that can be made available to the public under the Freedom of Information Act 2010 (FoIA) by the GoL" as '*Information on law enforcement in concession areas*':

- Section 1. 'Categories of information that will be routinely published', includes 1.6. 'Information on law enforcement in concession areas', (a) 'Penalties imposed and the list of those who actually paid and those who did not pay or complied'; and that
- Section 2.5. 'Information on law enforcement in concession areas', (a) 'Charges of violations, arrests, settlements and convictions associated with the operations under the forest resources license as recorded by the FDA', is also placed under the header of Section 2. 'Information available to the public when requested under the Freedom of Information Act'.

Preliminary finding: Such information (as per Art. 22,2d above): (i) must NOT be held confidential, and (ii) must therefore be disclosed pursuant to Art. 21 ("Information regarding implementation and monitoring of systems shall be regularly published…"), as per details in Annex IX on Public information and transparency measures.

Investigation in progress with Liberia LAS implementation partners: email consultation with the Public Affairs Division (PAD) and the Law Enforcement Division (LED) of the FDA and including the following Qu. 1: ***Is such "Information of monetary fines imposed, or regulatory action taken against any contractor" therefore currently (existing and) disclosed: where, and how, if any?***

Evidence found:

- From stakeholder consultation, these questions have long remained unanswered and should be brought to the JIC.
- From consulting with the LED in January 2018, no monetary fines had yet been imposed over the past five years – that the LED was aware of -, and no regulatory action taken against any contractor either by the FDA.

Conclusion in terms of Compliance/ Efficiency, from Audit 1: No monetary fines have been imposed by the LED over the past five years, and no regulatory action taken against any contractor either by the FDA, up to LED's knowledge. No information is therefore currently disclosed by the PAD of any "Information of monetary fines imposed, or regulatory action taken against any contractor".

For EFI, there is a felt need to work across the board on law enforcement: how the system should react to non-conformity regarding a product, including on the ground. A Law enforcement handbook has been issued, but which FDA dept. is in charge is still a question. The LED is said to be currently weak [See the IA's review under 6.2.4.2, Vol.1] and the LVD [See the IA's review under 7.3.7.3, Vol.1] to be in conflict of interests. A document is needed to set out the implication of a non-conformity for the issuance of a FLEGT License, blocking or not blocking etc. [See previous issue "Management of non-conformances under the VPA" followed-up in 6.4.6].

Follow-up by the IA during Audit 2

The IA was made aware of one fine being issued to an operator (See A3R 6.2.1.4, CFD Capacity analysis; 6.4.12, Review of Export permit issuance; 6.4.7.4, Effectiveness of CFD field inspections and reporting; copy of the letter 'FDA imposing fine.pdf' contained in **Annex 8.17** – Note: to be removed in next report).

The issue raised about this (ref. HII 5) in A2R - below - was therefore updated in A3R and will need to be followed up during next audits, along with the recommendation to activate the chain of responsibilities among FDA departments.

However, the evidence provided in A3R, Annex 7.22 was the only evidence of one single fine being issued to an operator not being compliant with requirements. And it was felt that the amount of the fine (USD5'000) did not necessarily act as a deterrent for companies to follow the legal route, since the profits derived from the illegally harvested logs were likely to far outweigh a fine that has to be paid at that level.

The 'Effectiveness of field inspections by FDA Commercial Forestry Dept. and reporting' was otherwise discussed in the next Chap. 7.4.1.4.

Follow-up by the IA during Audit 3

No clear information had yet been received from the PAD regarding the following:

- Is any such information therefore currently disclosed? If any, it should be on the FDA website. The audited PAD team admitted not having published anything, not being aware of any action taken by the institution, although the IA noted that, by the time of Audit 3, at least one fine had been imposed (above);
- PAD had pointed to "independent field inspections to provide firsthand information" being a responsibility of the PAD and to the lack of financial resources needed "to do independent field inspections and to have these reports done plus to complete the education and awareness process of the VPA

to the Regions". The PAD now clarified it is not responsible to conduct independent field inspections. This must have referred to the need to verify the information before publishing, to "be on the scene to indeed get firsthand information" [Note: and to the alleged keenness of all staff on field work to get DSA];

- Note: Understandably, the question of 'Where is such information usually published' remained pointless until such information existed to be published;
- A protocol had reportedly been developed by the PAD to have access to information from FDA for publication, but this could not be confirmed, and the need was mentioned of a "Memo to advise the institution to make sure PAD is aware of what goes on";
- Regarding what "summary report obtained from the field" from the LED should such info include, PAD clarified they are not receiving any, they are not aware of what they are supposed to get from LED, as it has never happened;
- As to which reports from the field the PAD would wish to be able to rely upon (e.g. summary field reports from the LED), the audited PAD team had no readily available response.

Whether the **procedure leading to the publication of information** is currently lacking: PAD is not aware of any (although, as above mentioned, the PAD had claimed to have developed a protocol to have access to information from FDA for publication). The EFI team said it was working on it (EFI, 05.02.2019).

EFI had also said to be developing a **communication strategy for the FDA** (as per VPA, Art. 21,1, re: VPA Ann. IX, 1, on FoIA: to support dissemination of information to all stakeholders, as indicated in Ann. VIII), one pillar in fact being the publication of information, especially on the FDA website. And that the stakeholders needed to have a discussion on whether LiberTrace, or the FDA website, should be used to communicate on VPA activity like in that area of law enforcement (Communication with EFI). Follow-up with PAD during Audit 3: PAD is neither involved nor aware of that for the VPA. Follow-up with EFI during Audit 3 (05.02.2019): A draft Communications strategy had been prepared by EFI and submitted for review to the EU Delegation and FDA. It awaited further developments before being approved at JIC level by both parties.

Update from Audit 4: EFI indeed presented a draft "Communication strategy for the JIC" at the 7th JIC (See 7th JIC Aide-memoire, Feb./March 2019). For future attention: Assess whether and to what extent the proposed Communication strategy addresses the area of law enforcement.

Conclusions (from A1R, as updated during Audit 3):

Information should not be held confidential and should therefore be disclosed, pursuant to VPA Art. 21 (as per details in Annex IX, on Public information and transparency measures) of any "monetary fines imposed or regulatory action taken against any contractor (or FLEGT license-holder, in due course)", pursuant to VPA Art. 22,2d.

However, no evidence has yet been received by the IA of any such information currently being disclosed on the FDA website.

The procedure leading to the publication of information was still lacking. EFI prepared a draft Communication strategy for the FDA (as per VPA, Art. 21,1); it still required further developments before being approved at JIC level by the EU Delegation and FDA [Subject to above update].

The Public Affairs Division (PAD) had pointed to the lack of financial resources needed to do independent field inspections and to report. It was now clear that the PAD do not do any such independent field inspections and should rather be able to rely on reports from the Law Enforcement Division (LED) or other FDA Depts.

Until February 2018, no monetary fines had been imposed, and no regulatory action taken against any contractor either, over the past five years if not more ("since the war" as some asserted). This was confirmed by observations made in Region 3 during Audit 1, that FDA had likely not implemented for many years any formal system of fining non-compliant operators.

There was a felt need that these questions are brought to the JIC and to work across the board on law enforcement.

Recommendations (from A1R, as updated during Audit 3):

- The LED must be enabled and willing to impose monetary fines and to take regulatory action against any contractor [subject to this being confirmed as being LED's role – See the IA's review on LED under 6.2.4.2 in Vol.1];
- The PAD must then be enabled to disclose / publish related information;
- The field reports that are due from the LED [if any] must be prepared;
- The PAD must be given the financial resources it needs to fulfill its roles;
- The procedure leading to the publication of relevant information must be approved by the JIC, as part of the comprehensive communication strategy that EFI has been developing for the FDA[31], and implemented.

Main conclusion from A1R (updated): As of February 2018, no sanctions were being imposed (monetary fines, regulatory action) on any contractor for violations of forest laws and published.

FDA/IAWG response to the Main R&C in the Audit 3 report

Issue: No sanctions being imposed for illegalities and published

Response: It is incorrect that there has been no sanctions imposed. FDA has fined some companies for violations observed. FDA acknowledges that current enforcement mechanisms are insufficient for which FDA needs additional resources. The publication of santions have also been hampered by the challenges of the FDA Website and using the existing LVD Registry for sanctions.

Mitigation Measure: Fines paid to LRA receipts available

Responsible Department: Commercial/LVD

Time Frame: Ongoing

Reference: LRA fines receipts

Remarks: Fines are paid based on violation

IA review of FDA/IAWG response:

- That "*FDA has fined some companies for violations observed*": The IA is aware of a few fines issued by FDA Management (whether it should have been by LED, or by the MoJ, and to which amount, are other issues that are discussed separately – See for example 6.2.3.9).

[31] As per VPA, Art. 21,1, re: VPA Ann. IX, 1, on FoIA, to support dissemination of information to all stakeholders, as indicated in Ann. VIII. The IA noted that the stakeholders should discuss whether to use LiberTrace or the FDA website to communicate on VPA activity like in that area of law enforcement.

- FDA's acknowledgment "*that current enforcement mechanisms are insufficient*" is noted. The IA can only agree that "*FDA needs additional resources*" in general, but suggests that enforcement is not the most resource-consuming mechanism; it should even be regarded as a source of revenues for the Government.
- That "*the publication of sanctions has been hampered by the challenges of the FDA Website*": the IA is aware that the FDA Website has often been "down" recently but thinks there is no technical and/or management issue in that regard that cannot be fixed (with the will to do it).
- That an "*LVD Registry for sanctions*" exists: LVD has not been able to provide any evidence of this; and "*the challenges of the FDA*" for using it for the monitoring and publication of sanctions.
- That "*LRA receipts of fines paid are available*": consulted, LRA informed the IA that "*LRA cannot provide copies of receipts (can only confirm). So, the IA needs to go back to FDA*".
- The IA has assessed that no clear FDA procedures exist for fine issuance (See LED review in 6.2.4.2) and the publication of relevant information (See PAD review in 6.2.4.3).
- Meanwhile, Issue HII 5 shall remain open.

Main recommendation from A1R (updated): Ensure that: (i) relevant field reports are prepared by FDA (Commercial Forestry Dept., LVD), (ii) the Law Enforcement Division is enabled and willing to impose fines or take action against contractors from those reports [subject to this being confirmed as being LED's role], and (iii) the Public Affairs Division (PAD) is enabled to transparently and timely publish related information and follow-up action for public scrutiny.

During Audit 3 the IA further investigated the chain of responsibilities among FDA departments for inspections, reporting, enforcement of sanctions, and publication of information. This chapter will need further updating when the respective roles of the Law Enforcement Division (LED) and the Public Affairs Division (PAD), as reviewed under 6.2.4.2 and 6.2.4.3 in the Vol.1 of this report, have been clarified. Issues will be followed up during the next audits in connection to other relevant VPA articles relative to law enforcement.

In the meantime, the IA updated the **ISSUE** it had previously raised about this situation in the IA Progress Database (ref. **HII 5**), as follows:

ISSUE HII 5
Impact level: High
Identified ISSUE: Very few sanctions being imposed on contractors for violations of forest laws and none published
Recommendation: Clarify and activate the chain of responsibilities among FDA depts. (inspections, reporting, enforcement of sanctions, public information).

6.4.16 Communication and transparency

Under this heading, a review of the publication of annual reports by the JIC has been considered completed in previous reports and was moved to under 7.4.13 (same heading) for archiving.

For future action: New evidence has been collected (below) for the Audit 4 regarding the broader communication and transparency issue. The review and analysis of the evidence collected was not the focus for Audit 4 and remains to be done. Below the IA just made sure the information is correctly organized for future action.

During Audit 3, EFI had said 1) to be developing a **communication strategy for the FDA** (as per VPA, Art. 21,1, re: VPA Ann. IX, 1, on the Freedom of Information Act 2010 (FoIA): to support dissemination of information to all stakeholders, as indicated in Ann. VIII), one pillar in fact being the publication of information, especially on the FDA website; and 2) that the stakeholders needed to have a discussion on whether LiberTrace, or the FDA website, should be used to communicate on VPA activity like in that area of law enforcement (Communication with EFI). Follow-up with EFI during Audit 3 (05.02.2019): a draft Communications strategy had been prepared by EFI and submitted for review to the EU Delegation and FDA; it awaited further developments before being approved at JIC level by both parties.

'VPASec Updates' on the 7th JIC version of the Forward Planner (FP) (February 25, 2019), not yet taking account of eventual 7th JIC decisions:

Regarding **Principle 11** (TRANSPARENCY AND GENERAL DISCLOSURE): "LIC/GoL needs to require that all *documents to be published*".

Regarding **Indicator 11.1** (contract/permit holder bi-annually publishes all payments and considerations to the Government), **Indicator 11.2** (contract/ permit holder participating in LEITI) and **Indicator 11.3** (copies of key contract documents made publicly accessible by FDA as per FoIA): "LIC/GoL needs to require all documents to be uploaded on LiberTrace and/or published".

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issues:

- Oct – Dec 2018 regarding **Principle 11** (above): "JIC decided that Information to be uploaded to the FDA website in a timely manner. Publication regarding agreement with companies on payment of tax arrears to be published on the FDA website. Draft to be prepared and shared. NBST to share information regarding use of funds on website (see P3 above). FDA indicated that Copies of information NSTB funds are not shared with FDA PAD*".*
- Oct – Dec 2018 regarding **Indicator 11.1** (above):
  "*IA assessed this as non compliant on basis that documents are not uploaded on LiberTrace".*
- Oct – Dec 2018 regarding **Indicator 11.2** (above):
  "Records not made available to FDA.
  IA also reported this as non compliant".
- Oct – Dec 2018 regarding **Indicator 11.3** (above):
  "Records not made available by FDA (website down).
  IA reported non compliant".

Note: Alleged IA findings should not be used without any clear reference and context. See ISSUE HII 35 raised in 6.2.2.2 (on inaccurate quoting of the IA).

Extract from the 7th JIC (Feb. 25 - March 1, 2019) Aide-memoire:

Communication strategy for the JIC

45. EFI presented the draft “Communication strategy for the JIC of the Liberia-EU VPA” and the draft “JIC protocol for managing contentious issues”. The purpose of these documents is to guide communication by the JIC. It was recommended that the implementation of the communication strategy be coordinated by the VPA Secretariat with the support of the Public Affairs Department of FDA and the EU Delegation. Additional guidance on content could be provided by specific “VPA focal points” in the FDA and EU Delegation.

46. FDA was of a strong view that the story of the Liberian VPA should be communicated both at the national and international levels and viewed this communication strategy as the beginning of this process. FDA and civil society also raised the importance of reaching out to communities and provide them with more information on the VPA. EU also pointed that communication should proactively show the progress and broadcast more positive messages to illustrate progress done.

47. Both parties expressed their interest and approval for the “Communication strategy for the JIC” and “JIC protocol for managing contentious issues”. The JIC also agreed that EFI will support the implementation of the Communication strategy with various communication tools and medium.

The approved “Communication strategy for the JIC and the “JIC protocol for managing contentious issues” are attached to the Aide-memoire as Annex 5*.

* The Annex 5 has been sent to the **Annex 8.21** to this report for future consideration, as well as Copies of presentations and other supporting material provided to the IA, including the ‘Text of the Presenter’s notes’.

Further action required: Assess whether information is disclosed pursuant to Art. 21 (whereby Information shall be regularly published… regarding implementation and monitoring of systems as per details in Annex IX on Public information and transparency measures). The VPA Annex IX "describes the information to be published by the GoL or that can be made available to the public under the Freedom of Information Act 2010 (FoIA) by the GoL".

It also remains to be assessed whether the Communication strategy addresses communication on the Independent Audit, in particular a procedure for decision by the JIC whether, and on which sites, to publish the IA documents and reports.

6.4.17 Timber products that are subject to the LAS

Status: This review was considered completed in the previous report and has now been moved to under 7.4.14 (same heading) for archiving.

6.5 New issues from (other) reports or complaints made known to the IA

Some reports or complaints have been used in the relevant sections of this report.

Reviews conducted in this Ch. 6.5, once completed, are to be moved to under Section 7 for archiving.

6.5.1 Approval of Annual Operation Plan (AOP) in a CFMA

Status: This review was considered completed in the previous report and has now been moved to under 7.4.3.2 (same heading) for archiving.

6.5.2 Implementation of social agreements with communities

For future action: New evidence has been collected (below) for the Audit 4 regarding this broad issue. The review and analysis of this information was not the focus for Audit 4 and remains pending. For this purpose, and to be able to then draw documented conclusions anout this issue, the below material will be complemented with information collected through meetings with NBSTB/ NUCFDC during Audit 4.

Below the IA just made sure the information is correctly organized for future action.

This review once completed shall be moved to under 7.4.4 Social Obligations and Benefit Sharing (LM P3) for archiving. It links to 7.4.2 on CyFD.

As previously discussed with community stakeholders and with SGS/LVD, there is strong demand and expectation on the part of communities for data from SGS/LVD to support the sharing of benefits from commercial logging:

- But LVD is not involved in checking Benefit sharing. LVD (LiberTrace) does not currently do the calculation.
- It could easily do it for CFMAs, as it is simple: 1 CFMA, 1 community.
- For one FMC area: there are several to many community areas. LiberTrace (LT) does not manage logging data per community area. LT can already issue reports per block and this could be done at block level. FDA is then be supposed to do the allocation of volume to the communities. This is subject to FDA knowing the exact boundaries, which block is located in the area of one affected community (For future attention: to be confirmed whether or not this is happening. Confirm FDA does the allocation of volume to the affected community/ies based on logging data per community area, FDA (CFD?) having access to (FMC/TSC/CFMA) logging data (per block and/or per tree? from the logging company or from LT or from LVD issuing reports at block level?) and knowing the exact boundaries, thus being enabled to do the reconciliation. Would it be possible to ensure that block boundaries follow community areas?).
- SGS is not keen to introduce Community information in LT and to manage areas smaller than a block (cell, stump): “Small communities pop up, unexpectedly”.
- For future attention: SGS expressed surprise regarding a “new MoU” (with LRA?) whereby FDA is no longer tasked with the provision of information for benefit sharing. IA Legal expert asked LRA for a copy of the MoU.

The IA also registered an **ISSUE** (ref. **HII 30** in IA's Progress DB) about the lack of LVD (LT) support to the National Benefit Sharing Trust Board (NBSTB) mechanism:

ISSUE HII 30
Impact level: High
Identified ISSUE: LVD (LiberTrace) does not currently support the Benefit sharing with communities, where it is due, by providing the calculations
Recommendation(s): Enhance LiberTrace to provide the data for CFMAs. LVD to issue reports at block level or smaller areas for FDA to then do the reconciliation. Ensure block boundaries follow community areas.

Relevant extracts from the 6th JIC Aide-memoire (June 2018):

- Under Principle 9 (Social Obligations)[32], FDA emphasized that (despite the strong need for tax collection) the Liberian law is (…) weak on the community management and monitoring side. The regulation on annual audits of the National Benefit Sharing Trust Board (NBSTB)'s disbursements to forest-affected communities and community projects needs to be enforced. FDA's Community Dept. is (…) getting increasingly involved in monitoring aspects of community project implementation (Introduction, 9);
- The EU is concerned that community projects are not always in line with GoL's sectoral policies (health and education, for instance), therefore staffing and sustainability are at risk along with benefits for the communities. FDA recognized the concern but highlighted that legally it is up to the community to choose the project and its scope. However, it is in the realm of the National Union of CFDCs (NUCFDC) and the NBSTB to ensure projects are structured to benefit communities. The EU and FDA urged that the NMSMC continue to be used to further hold the NBSTB accountable in ensuring that infrastructural projects are actively operating and benefitting the community (Introduction, 10).
- The NUCFDC requested more clarity around the responsibility of dissemination of data between FDA and SGS. FDA responded that they have made progress with communities around the dissemination of cubic meter fee data and the different FDA departments are working to provide adequate data around other fees to the communities (Introduction, 12).

The IA was further provided with the following evidence:

- Copy of NUCFDC 'Letter of Formal Complaint against 'International Consultant Capital (ICC) Logging Company' dated **12.04.2018** to the MD of the FDA, copied to several FDA depts. and other entities (making it virtually public[33]), asking FDA to request the company to pay cubic meter fees owed to affected communities of the corresponding FMC and ensure that the company lives up or fully implement the social agreements the company signed with these affected communities. The letter also draws the FDA MD's attention to the amount this and other logging companies owed in Land rental fees.
- As part of background Information, the letter mentions relevant mechanisms:
  - SGS/LVD information regularly posted on the FDA website shows activity of the company, the Land Rental Fees it owed

[32] Social Obligations and Benefit Sharing (P3) or Taxes (P9)?
[33] Hence the IA will not keep the name of the company confidential by in this case

- NUCFDC report on the performance of companies in relation to implementation of social agreements, based on indicators (NUCFDC Social Agreement Compliance Monitoring Report 2017)
- FDA CFD validated the volume serving as the basis to calculate the amount of Cubic meter fees due to affected communities in one county
- In another county the CFDC does not have any record from the company (only verbal reports) or SGS on the total volume of logs harvested over five years. The company tells the CFDC to go to SGS and SGS tells the CFDC they are under no obligation to provide information to CFDC.
- The NUCFDC and concerned CFDC threatened to take the company to court for debt and failure to live up to the social agreements.

The IA raised an **ISSUE** (ref. **HII 9**) about this in the IA Progress DB:

ISSUE HII 9
Impact level: High
Identified ISSUE: "Fee arrears owed to communities as per SAs, and others", now updated to "Reported case of Operator's failure to implement financial and other obligations to communities as per signed Social Agreement"
Recommendation: Responsible government bodies [To Be Determined] to enforce social agreements with communities.

For future verification of the NUCFDC letter by the IA and future attention (whether a merger or a common heading could be considered for the issues or main C&R): This issue seems to relate specifically to the payment by the logging company of Land rental / "Cubic meter" fees owed to affected communities of the corresponding FMC, more than to the implementation of other commitments included in the social agreements the company signed with the affected communities. In that regard it would strongly link to the other issues (**MII 13**: COCS not currently allowing CSOs to provide monitoring data…**, HII 30**: LVD (LiberTrace) does not currently support the Benefit sharing…) mentioned under 3.24 (Monitoring data sharing with civil society organizations / communities).

'VPASec Updates' on the 7th JIC version of the Forward Planner (FP) (February 25, 2019), not yet taking account of eventual 7th JIC decisions

Regarding **Principle 3** (SOCIAL OBLIGATIONS AND BENEFIT SHARING), **Indicator 3.1** (social agreement negotiated): "FDA community forest department to clarify the status of social agreements with affected communities. JIC to make a decision on how to proceed with this."

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issues:

- Jun 2018: "Clarify for the JIC the mechanism to systematically track the use of the funds disbursed by the NBST*".*
- Jul 2018: "In collaboration with NUCFDC and FDA Community Dept. work on implementation of social agreements with the Private Sector in Region 3*".*
- Oct – Dec 2018: "VPASec. More details on this to be checked with VPA Sec. So as to follow up at the community department of FDA.
  The IA considers that this indicator has not been complied with completely. Verifiers 3.1.1 to 3.1.3 are marked non compliant. Documents required in the verifiers like

meeting minutes with affected communities, public notice of intent to negotiate with the with affected communities; all these documents are not uploaded to LiberTrace."

Note: Alleged IA findings should not be used without any clear reference and context. See ISSUE HII 35 raised in 6.2.2.2 (on inaccurate quoting of the IA).

Regarding **Indicator 3.2** (social agreement signed and becoming effective as pre-felling requirement): "More details on this to be checked with VPA Sec. So as to follow up at the community department of FDA.
The IA considers that this indicator has only been partly met, as executed Social Agreement signed by contract holder and each affected community; List of CFDC identified by or registered with FDA are still pending on LiberTrace."

Note: Alleged IA findings should not be used without any clear reference and context. See ISSUE HII 35 raised in 6.2.2.2 (on inaccurate quoting of the IA).

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issues:

- Oct – Dec 2018 regarding **Indicator 3.3** (social agreement on code of conduct, dispute resolution, payment of financial benefits) and **Indicator 3.4** (social agreement attested to by the FDA): "According to the FDA there is nothing outstanding on this.
  This indicator is also considered completely complied with by the IA given that Social agreement with code of conduct and with minimum cubic meter fee included has been uploaded onto Libertrace".
  "*…given that Document uploaded onto Libertrace*".

  Note: Alleged IA findings should not be used without any clear reference and context. See ISSUE HII 35 raised in 6.2.2.2 (on inaccurate quoting of the IA).

Regarding **Indicator 3.5** (effective and timely payment of financial benefits): "The status of this indicator to be confirmed with FDA community forest department at the JIC."

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issues:

- Oct – Dec 2018: "According to the FDA there is nothing outstanding on this.
  Communities receive bank statements as required
  This indicator is considered by the IA as not completed given that there are no documents uploaded on LiberTrace with stipulated fee paid on time and FDA compliance audits are not on LiberTrace."

  Note: Alleged IA findings should not be used without any clear reference and context. See ISSUE HII 35 raised in 6.2.2.2 (on inaccurate quoting of the IA).

The following assessment from Audit 3 (Nov. 2018) was copied in from 6.2.2.2 (The CyFD in the LM) in this report:

LM Clauses	**3** Social obligations and benefit sharing **3.4** The social agreement between the contract holder and the community or communities has been attested to by the FDA 3.4.1 FDA-attested social agreement between contract holder and affected community
Other clauses	N/A
Procedures	Procedures exist for the issuance of CFMA, but not for FMC and TSCs
Design of Templates	Social agreement template exists. Needs to be reviewed every 5 years.
Relevance in	Fully relevant

LM	

Note: Indicator 3.4 actually covers the approval of the social agreement while enforcement of the social agreements is covered, partly (timely payment of the fees) but also more broadly through “annual audit reports by the FDA measuring compliance of contract holders", under Indicator 3.5.

Although the Head of the Department stated that enforcement of social obligations towards communities is then a responsibility of the Commercial FD, not Community, this needs to be formally confirmed by the MD of the FDA; otherwise it is assumed that this function belongs naturally with, and falls under the ambit of the CyFD.

The IA registered the following **ISSUE** (ref. **MII 12** in the IA Progress DB) during Audit 3:

ISSUE MII 12
Impact level: Medium
Identified ISSUE: It is currently unclear which FDA Dept. monitors compliance with social obligations towards communities: CyFD (natural function) or CFD (better placed in-field for efficiency)
Recommendation: Formal confirmation by the MD of which FDA Dept. is responsible for the enforcement of social obligations towards communities.

Relevant extracts from the 7th JIC Aide-memoires have been sent to the **Annex 8.22** to this report (Implementation of social agreements with communities – Supplementary information) for future consideration, as well as Copies of presentations and other supporting material provided to the IA, bringing more light regarding Benefit Sharing Progress and Payments (Principle 3), Transparency requirements under the VPA and current availability of information, and Tax collection and redistribution.

Is LRA involved in those payments? In the functioning of the NBSTB mechanism?

Follow-up during Audit 4 (Nov. 2019), with LRA:

- LRA collects for the general revenue account (all fees, incl. stumpage, land rental fees, not based on volume); not responsible for the disbursement…;
- LRA was never part of a MoU regarding Benefit Sharing (See 6.1.7.3);
- But as part of social agreement, the Company pays the Community directly for the Cu.mt. fees;
- SGS/LVD reports.
- (LEITI reports: come too late).

6.5.3 Suspension of Liberia from the global EITI Program

This review was conducted in the previous report. An update received before closing this report was placed under 6.5.3 (same heading) in Vol.1 of this Audit 4 report.

Liberia implements the international EITI (Extractive Industries Transparency Initiative) Standard. As such it is required to publish an annual EITI Report disclosing information on: contracts and licenses, production, revenue collection,

revenue allocation, and social and economic spending. The report reconciles data provided by companies and by the Government.

The LEITI (Liberia EITI), with office in Monrovia, works through a Multi-stakeholder Steering Group (MSG) to improve the governance of the Extractive sector in Liberia (www.leiti.org.lr).

In September 2018, press articles[34] reported that Liberia has been suspended from the LEITI process due to the extra-legal change of its leadership and other reasons. The IA sought confirmation and explanations on possible reasons and consequences.

As the IA Legal expert was able to get confirmation of, Liberia has been suspended and will remain suspended from the EITI pending the satisfactory completion of a number of steps.

Liberia suspension was based on its failure (1) to publish required EITI report detailing reconciled payments made by extractive companies (including logging and agriculture companies, as a matter of Liberian laws) and (2) to effectively engage with civil society and other stakeholders to ensure the proper functioning of the multi-stakeholders process, which is at the foundation of the EITI program.

What it means then is that Liberia will be suspended from the EITI until it does the following:

1. Publish a country EITI report that brings to date publicly accessible information about payments made and revenues received from extractive companies. This is required by the EITI Standard to be done yearly, but Liberia has not published for at least two years[35];
2. Ensure that the appointment of the head of the LEITI as well as members of the LEITI MSG is compliant with the law;
3. Engage with CSO properly so that they can play their effective role as a key partner in the LEITI, as the EITI principles is framed to ensure a protected participation of CSOs; and
4. Comply with such other measures that the international EITI Board may prescribe to ensure that Liberia is truly committed to and implementing the EITI criteria and principles.

Worthy of note is the importance of the LEITI for the LM as reflected in two Indicators under Principle 11: TRANSPARENCY AND GENERAL DISCLOSURE:

- Indicator 11.2. The contract or permit holder is currently participating in the Liberia Extractive Industries Transparency Initiative (LEITI); and
- Indicator 11.3. Copies of the contract, license, permits, records of payments made to Government as well as the bid evaluation report of its successful bid are made publicly accessible by FDA in keeping with the Freedom of Information Act of Liberia.

The IA therefore raised an **ISSUE** (ref. **HII 34** in the IA Progress DB) about this during Audit 3:

ISSUE HII 34

[34] "EITI Suspends Liberia"; "Can Liberia Afford The Re-Imposition of Sanctions on Its Timber Industry/Forestry Sector?", Liberian Daily Observer, September 11 and 17, 2018

[35] The last report published on the LEITI website is the "EITI Report for the year ended 30 June 2015, published July 2016.

Impact level: High
Identified ISSUE: Suspension of Liberia from the global EITI Program, due to incompliance with rules relative to annual reporting, change of its leadership, and multi-stakeholders process, and preventing implementation of LM Indicators 11.2-3
Recommendation(s): Liberia will remain suspended from the EITI until it complies with the measures the international EITI Board prescribes to ensure that Liberia is truly committed to and implementing the EITI criteria and principles.

6.5.4 Issuance of Export permits

Status: This review was conducted in a previous report and has now been moved to under 7.5.3.2 (A case of FDA approval of Export permit against SGS/LVD recommendation) for archiving.

6.6 'Risks & Issues tracking' Database [IA Progress DB]

A copy of the updated version of the 'Risks & Issues tracking' Database [IA Progress DB] is now provided in the Volume 1 of this Audit 4 report (Chap. 7.2).

7 PREVIOUS REVIEWS COMPLETED

This section contains reviews already completed in previous reports of the IA and not significantly updated during the Audit 4 (not generating new significant conclusions).

7.1 Assessment of VPA requirements

7.1.1 VPA articles

Table 4: Assessment of VPA requirements - VPA articles

	For information only	*Not considered being in IA's scope*	*Fulfilled[36] by design and ratification of the VPA; no issue pending*	*Required measure implemented*	*Fulfillment "assumed"*	*Review in progress, or ongoing compliance*
Art. 1; 2	X					
Art. 3,1a, b			X			
Art. 3,1c; 3,2						X
Art. 4,1a			X			
Art. 4,1b, 1c, 1d; 4,2a, 2b; 4,3a, 3b; 4,4a, 4b, 4c						X
Art. 5,1a, 1b, 1c; 5,2a, 2b, 2c; 5,3; 5,4; 5,5a, 5,5b						X
Art. 6,1			X			
Art. 6,2; 6,3						X
Art. 6,4			X			
Art. 7,1a; 7.1c			X			

[36] By definition

	For information only	*Not considered being in IA's scope*	*Fulfilled[36] by design and ratification of the VPA; no issue pending*	*Required measure implemented*	*Fulfillment "assumed"*	*Review in progress, or ongoing compliance*
Art. 7,1b						X
Art. 8,1a	X		X			
Art. 8,1b; 8,1c; 8,1d; 8,1e; 8,2						X
Art. 9,1a; 9,2			X			
Art. 9,1b; 9,1c						X
Art. 10,1 a-d; 10,2						X
Art. 11,1; 11,2			X			
Art. 11,3; 11,4a; 11,4b; 11,5a; 11,5b						X
Art. 12; 12(a); 12(b); 12(c)						X
Art. 13,1; 13,2a; 13,2b; 13,2c						X
Art. 14,1			X			
Art. 14,2						X
Art. 15,1						X
Art. 15,2a; 15,2b; 15,3; 15,4; 15,5; 15,6		X				
Art. 16,1						X
Art. 16.2				X		
Art. 16,3		X				
Art. 17,1		X				
Art. 17,2						X
Art. 18 (a), (b)		X				
Art. 19,1; 19,2			X	X		
Art. 19,3b; 19,3f;				X		
Art. 19,3a; 19,3d; 19,3e; 19,3g						X
Art. 19,3c						X
Art. 19,4; 19,5	X	X			X	
Art. 20,1; 20,2	X					
Art. 21,1, Ann. IX						X
Art. 21,2; 21,3				X		

	For information only	*Not considered being in IA's scope*	*Fulfilled[36] by design and ratification of the VPA; no issue pending*	*Required measure implemented*	*Fulfillment "assumed"*	*Review in progress, or ongoing compliance*
Art. 22,1; 22,2a; 22,2b; 22,2c; 22,2d						X
Art. 23						X
Art. 24,1; 24,2; 24,3; 24,4; 24,5; 24,6; 24,7						X
Art. 25						X
Art. 26,1; 26,2	X					
Art. 26,3						X
Art. 27	X					
Art. 28	X					
Art. 29						X
Art. 30;					X	
Art. 31.1; 31,2				X	X	

7.1.2 VPA annexes

Table 5: Assessment of VPA requirements - VPA annexes

	For information only	*Not considered being in IA's scope*	*Fulfilled[37] by design and ratification of the VPA; no issue pending*	*Required measure implemented*	*Fulfillment "assumed"*	*Review in progress, or ongoing compliance*
Ann. I	X					
Ann. II, 1a						X
Ann. II, 1b1						X
Ann. II, 1b2				X		
Ann. II, 1c			X			
Ann. II, 1d1-3			X			
Ann. II, 1d4; 1d5; 1d6; 1d7						X
Ann. II, 1d8; 1d12			X			
Ann. II, 1d9-11				X		
Ann. II, 2.1a-c			X			
Ann. II, 2.1d-h						X
Ann. II, 2.2a-c			X	X		
Ann. II, 2.3a			X			
Ann. II, 2.3b; 2.3c						X
Ann. II, 3.1a-b				X	X	
Ann. II, 3.2a-c			X		X	
Ann. II, 3.3a-b						X
Ann. II, 3.3c						X
Ann. II, 4.1a-d			X			
Ann. II, 4.2a; 4.2b; 4.2c; 4.2d; 4.2e						X
Ann. II,			X		X	

[37] By definition

	For information only	Not considered being in IA's scope	Fulfilled[37] by design and ratification of the VPA; no issue pending	Required measure implemented	Fulfillment "assumed"	Review in progress, or ongoing compliance
4.2f-h						
Ann. II, 4.3a; 4.3b; 4.3c						X
Ann. II, 5.1a				X		
5.1a(a), 5.1a(b)						X
5.1a(c)				X		
Ann. II, 5.1b						X
Ann. II, 5.1c					X	
Ann. II, 5.2a-j			X			
Ann. II, 5.3a-e			X			
Ann. II, 5.4a-e			X			
Ann. II, 5.5a-i			X			
Ann. II, 5.6a-m			X			
Ann. II, 5.7a-f			X			
Ann. II, 5.8a			X			
Ann. II, 5.8b						X
Ann. II, 5.9a						X
Ann. II, 5.9b-d			X			
Ann. II, 5.10a-c			X			
Ann. II, 5.10d						X
Ann. II, 5.11						X
Ann. II, 5.12a			X			
Ann. II, 5.12b, 5.12c						X
Ann. II, 6.1-3			X			
Ann. II, 6.4						X
Ann. II,			X			

	For information only	Not considered being in IA's scope	Fulfilled[37] by design and ratification of the VPA; no issue pending	Required measure implemented	Fulfillment "assumed"	Review in progress, or ongoing compliance
7.1-6						
Ann. II, 8.1-2			X			
Ann. II, A1.1a-d			X			
Ann. II, A1.2a-i			X			
Ann. II, A2.1a-b			X			
Ann. II, A2.2			X			
Ann. II, A2.3						X
Ann. II, A2.4-5			X			
END OF AUDIT 3 REVIEW						
Ann. II, B.						

7.2 Risks & Issues' Database [IA Progress DB]

A copy of the entire tracking database of the key risks & issues registered so far by the IA, as updated during Audit 4, is provided in the Volume 1 of this Audit 4 report.

7.3 Baseline review of VPA requirements, Track record of activity

7.3.1 VPA Articles

7.3.1.1 VPA Art. 3,1b

This review was considered completed in the Audit 2 report (6.1.2.1) and no issue was raised; therefore the discussion was moved hereto for archiving.

Art. 3,1b requires the "FLEGT Licensing Scheme (to establish) a set of procedures and requirements aiming at verifying and attesting, by means of FLEGT licenses, that timber products shipped to the Union were legally produced or acquired".

The IA criteria included:

- Set of procedures and requirements established in the VPA, with such aim;
- Appropriate to the aim;
- Including Monitoring & Evaluation (M&E) procedures, and
- Mechanisms for issues to be transparently raised discussed, and addressed

Evidence found:

- As per Art. 7, 1a: a definition of "legally produced timber" is set out in Art. 2 and in Ann. II;

- Art. 7, 1c: Ann. II also includes legality matrices, indicators and verifiers and detailed verification procedures to be followed to determine compliance with Liberian law;
- A set of procedures and requirements is therefore indeed established in the VPA, with the required aim;
- Mechanisms in place to transparently raise, discuss, and address issues include: the JIC, other committees and dialogues, Complaints mechanisms...

Regarding M&E:

- The JIC has overall responsibility for monitoring implementation of the VPA (Ann. VIII, 9, & Ann. X);
- The Independent audit's objective is relevant, to assess whether the LAS is functioning effectively, appropriately and with credibility and to identify potential weaknesses and risks in the structures and implementation of the system (ToR in Ann. V; Ann. II);
- Ann. VI also provides 'Criteria for an independent technical evaluation of the L.A.S. before the FLEGT licensing scheme becomes operational'.

7.3.1.2 VPA Art. 3,2

This review was considered completed in the Audit 2 report (6.1.2.2) and no issue was raised; therefore the discussion was moved hereto for archiving.

Art. 3,2 requires the FLEGT licensing scheme to apply to the "timber products" listed in Annex I.

A comprehensive analysis of the VPA Art. 3,2 linking to the VPA Annex I (List of products subject to FLEGT licensing) was included in the Audit 1 report.

This issue is now covered in the follow-up of previous issues in this report under 6.4.17, 'Timber products that are subject to the LAS'.

7.3.1.3 VPA Art. 4,1a

This review was considered completed in the Audit 2 report (6.1.2.3); therefore the discussion was moved hereto for archiving.

Reference in the Audit 2 report: 6.1.2.3. Since this review had been completed and no issue was raised, the discussion was moved hereto for archiving.

Art. 4,1a requires "Liberia (to) designate its "licensing authority".

This is now being assessed as a requirement from Ann. II, 3.3 under Chap. 6.1.7.2.

Conflict of interest issues in the institutional set-up of the LAS have been highlighted for consideration by the JIC (in 6.4.4).

7.3.1.4 VPA Art. 4,2

This review was considered completed in the Audit 3 report (6.1.2.4); therefore the discussion was moved hereto for archiving.

VPA requirements:

- The licensing authority shall verify that timber products have been legally produced in accordance with legislation listed in Annex II

- In accordance with the terms set out in Annex II, it shall issue FLEGT licenses covering shipments of legally produced or acquired timber for export to the Union

For further attention, the following was observed in LiberTrace: under SALES, CLOSED, EP 2018/00349, LOG PRODUCTS (71)): FLEGT LICENCE 07/03/2018 11:41 AM: **Log** AA092WFZ **has been included in FLEGT License** # EU-FR/2018/000081 **issued on** 07.03.2018)".

Question raised: Does it mean that LVD is already issuing licenses? Or that LiberTrace already processes FLEGT Licenses “as if” the VPA was operational?

Issue taken up by EFI (16.01.2019): It could be worrying if the system already recorded the issuance of FLEGT licenses. This option is supposed to be ready but not yet operational. Could this create space for fraud?

Dissertation: It is unlikely that licenses are already issued and put into circulation: the EU is not yet requesting them, and would not be ready to receive them anyway. But due to a risk of improper commercial use under EUTR DD, it is worth asking SGS/LVD to find out what happened to this issuance of licenses in LiberTrace.

Assumption to be verified (with EFI or SGS/LVD, for future IA action): just meaning that the software already includes the functionality.

7.3.1.5 VPA Art. 8,1a

Origin: This review was considered completed in the Audit 2 report (6.1.2.4); therefore the discussion was moved hereto for archiving.

Art. 8,1a requires "Liberia (to) establish a system to verify that timber has been produced or acquired legally”.

The assessment, whether the LAS is properly “established” i.e. designed for its purpose and elements are in place and operating as described in the VPA Annex II, pursuant to Art. 8.2 will be conducted as part of the review of the Annex II (and the conclusion below relocated under the relevant requirement).

The analysis of this VPA Art. 8,1a conducted in the Audit 1 report (6.1.1.4) is now followed-up under 6.4.13 in this report as a previously reported issue (Inconsistent enforcement of Legality matrix requirements).

7.3.1.6 VPA Art. 8,1e

This review was considered completed in the Audit 2 report (6.1.2.6); therefore the discussion was moved hereto for archiving.

Investigation

As per Art. 8,1e of the VPA: "The system (for verifying that shipments of timber products have been legally produced) shall also include procedures to ensure that timber of illegal or unknown origin does not enter the supply chain" (or to **ensure that no timber of illegal or unknown origin enters the supply chain**).

The questions below are those that were sent to key stakeholders under 5.1.3 in the Audit 2 report.

Question 1 related to the specific aspect of identification, i.e. allocating a unique ID to each product, through for example bar coding, with a mechanism that allows the “filiation” from parent to child(s) at each step:

Question 1: ***What would you say is included in the design of the system to ensure: the unambiguous identification of each and every timber product?***

Question 2: ***What would you say is included in the design of the system to ensure: the unambiguous association of each and every timber product with the results of legality or traceability verification checks at all steps in the production chain?***

Question 3: ***What would you say is included in the design of the system to ensure: that the system would detect and reject from the supply chain any timber from illegal or unknown origin?***

History of interaction with the auditee:

28/12//2017: Information request sent to SGS/LVD, FDA and VPASU (Cc: EU, DFID, EFI, IA)

02/01/2018: EFI made an informal comment that FDA, following the transfer of capacity from SGS to LVD for Region 3, would be expected to respond.

09/01/2018: The IA sent a reminder, asking when the recipients intended to provide those initial answers.

10/01/2018: VPASU provided initial answers and suggested that Q3 would be best answered by SGS.

11/01/2018: The IA reviewed VPASU's inputs, forwarded the document to collect SGS's inputs to Q3 and asked SGS to address further questions and comments on Q2 and Q3. SGS provided further answers (to 3 requests - VPA Art. 8,1, VPA Art. 8,1e and Re: Current issuance of export permits - in the same document). SGS also asked the IA to clarify the meaning of "system".

12/01/2018: The IA clarified that "system" as per Art. 8,1e of the VPA is "the system for verifying that shipments of timber products have been legally produced" as described in Annex II of the VPA, which Annex II refers to such system as "The legality assurance system (LAS) of Liberia" that includes the "Chain of custody system".

19/01/2018: The IA reminded SGS, asking to receive further answers by 22/01/2018 or the IA will not be able to incorporate them in the forthcoming audit report, in which case the requested information will be reported as unavailable from the responsible institution at the time of closing the report.

20/01/2018: SGS replied they would do their best but advised to have a face-to-face discussion. **T**he IA offered to have a conference call to unblock any difficult understanding by email.

23/01/2018: following some confusion regarding this subject, the IA compiled both VPASU and SGS' inputs and clarified that answers were still needed to Questions 2.1, 2.2, and 3. As of 23/01/2018**:** VPASU's and SGS's further inputs were still needed.

24/01/2018: conference call scheduled with SGS.

25/01/2018: following further email exchanges, investigation considered closed to the IA's satisfaction (See 6.1.5).

Results

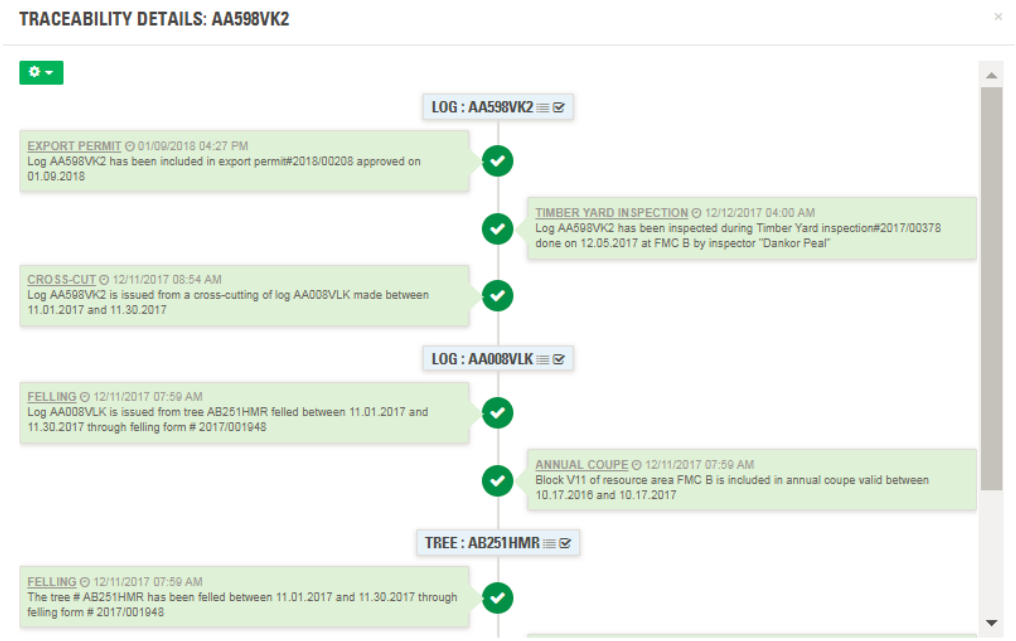
Art. 8,1e requires the “System to include procedures to ensure that no timber of illegal or unknown origin enters the supply chain”.

The IA criteria included:

- Clear identification of timber and association with results of legality / traceability verification checks;
- System would detect and reject timber from illegal or unknown origin.

The description provided by VPA SU and the “Traceability details” found in LiberTrace (See the screenshot below) illustrate what the system is able to deliver.

Result/Conclusion: The IA was satisfied with the information provided.



Processed products:

- The processed products also recorded using a particular data form. Traceability through the mills: back-to-stumps traceability is implemented by batch, by species, for bundles or individual lumber pieces. *N* logs used to produce *P* products, leading to *N* log sources.
- As to which processed products are in use: LiberTrace can manage all types, but currently the SGS mandate is for 1st and 2nd processing (downstream from sawmilling); no 3rd processing activity exists in Liberia (no peeling, no veneer slicing).

Qu. 3 asked what allows the system to ensure that the system would detect and reject from the supply chain any timber from illegal or unknown origin.

The COCS as reflected in the COCIS/LiberTrace achieves unambiguous identification of timber (through barcoding of logs/ lumber) and association with results of legality / traceability verification at all steps.

The system would detect, reject any timber from:

- Unknown origin: i.e. not traceable to previous step in system/field (e.g. a log can only be declared in relation to a tree) as also sample checked through a physical inspection and subjected to automated and manual consistency checks;

- Illegal origin at 3 levels: product conformity to regulations (in T for Traceability); all fees paid (in F for Fiscality), and Legality of concession and company (L).

LiberTrace ensures 100% traceability, and all decisions by the respective bodies in charge are traceable.

The IA was satisfied with the information provided.

7.3.1.7 VPA Art. 8,2

This review had been completed in the Audit 2 report (6.1.2.7); hence the discussion was moved hereto for archiving.

Art. 8,2 states "Legality verification system is described in Annex II".

The assessment, whether LAS is "established" (i.e. designed for its purpose) and elements are in place and operating, will be best addressed through relevant VPA implementing articles (Ann. II).

Note: the issue previously raised under this Article 8.2 ("Many LM Indicators reported as not currently enforced (for different reasons) and therefore not verified for the purpose of issuing Export permits") will be best addressed under Ann. II. It is recorded in the IA Progress DB under the HII 3 reference as mentioned above in relation to VPA Art. 8,1a.

The review under this particular VPA article is considered complete.

7.3.1.8 Art. 9,1a

This review had been completed in the Audit 2 report (6.1.2.8); so the discussion was moved hereto for archiving.

Art. 9,1a states "Liberia shall endeavor to verify the legality of timber exported to non-Union markets, ... using, where possible, the legality verification systems (LVSs) developed under this VPA".

Evidence found: Section 2.3 of Annex I as well as Ann. II, 2.3b of the VPA provide that "*Verification of legality shall apply … to … exports*, *irrespective of the country of destination*.

The assessment, whether LVSs are also applied to timber exported to non-Union markets (incl. neighboring countries through terrestrial border crossing points), will be best addressed through relevant VPA implementing articles (Ann. II, 2.3b).

The review under this particular VPA article is considered complete.

7.3.1.9 Art. 9,1b

This review had been completed in the Audit 2 report (6.1.2.9); therefore the discussion was moved hereto for archiving.

Art. 9,1b requires "Liberia (to) endeavor to verify the legality of ... timber sold on its domestic markets, ... using, where possible, the LVSs developed under this VPA".

Evidence found: Section 2.3 of VPA Annex I (also recalled in Ann. II, 2.3c): "*Verification of legality shall apply … to timber products sold on domestic market*. Checks on products sold on the domestic market will gradually be phased in according to a schedule that depends on the implementation of the Community Rights Law and Chainsaw Regulation, and which takes consideration of ECOWAS regional trade treaties and their integration into the LAS".

As per the IA's Inception report 3.2.5.2, the IA is due to monitor FDA's efforts to finalize the necessary regulations to the Community Rights law in addition to reviewing and revising the existing Chainsaw Regulations (also pursuant to Ann. II, 2.1d). This is taking place under 6.4.1.1 (Development of new regulations and application to the LAS) in this report.

Application of the LAS to sales on the domestic market is also mentioned Ann. II, 1d5 (COCS) and Ann. II, 2.3a and will be assessed under Ann. II, 2.3c.

The review under this particular VPA article is considered complete.

7.3.1.10 VPA Art. 14,2

This review had been completed in the Audit 2 report (6.1.2.10); so the discussion was moved hereto for archiving.

Investigation

Art. 14,2 of the VPA: **The Parties, working through the JIC, shall evaluate the progress of implementation with reference to the schedule set out in Annex VII**.

However the initial schedule set out in Annex VII of the VPA was only indicative and is obviously obsolete today.

The questions below were sent to key stakeholders under A2R 5.1.3.

Question 1: ***Has there been any revision so far, through the JIC, of that initial schedule?***

Note: See 2nd JIC Meeting 150610-12 AM.pdf, Annex 6: Up-dated annex VII of the VPA

Question 2: ***Is there a mechanism in place for the periodic revision, through the JIC, of the initial schedule?***

Question 3: ***What mechanisms otherwise exist to evaluate the progress of implementation: Forward planner, others?***

Question 4: ***Are these mechanisms cross-referenced with milestones in the initial schedule set out in Annex VII of the VPA?***

Question 5: ***Please can you provide the IA with a copy of the current Forward planner file (large version)?***

History of interaction with auditees (common to Art. 14,2 and Art. 19,3a, 3b, 3d, 3e, 3f, and 3g):

27/12/2017: Information request sent to the VPA Secretariat and the FLEGT Facilitation

09/01/2018: The IA sent a reminder, asking when the recipients intended to provide initial answers and providing an MS Word file to collect these answers.

10/01/2018: the VPA Secretariat acknowledged the message, informed that the FLEGT Facilitator was expected back to Liberia that week, and stated they would address the IA's questions as soon as possible.

19/01/2018: The IA sent another reminder, asking to receive further answers by 22/01/2018 or the IA will not be able to incorporate them in the forthcoming audit report and the requested information will be reported as unavailable from the responsible institution at the time of closing the report.

23/01/2018: the VPA Secretariat provided feedback to Q7, Q8, Q10, Q11, Q14 and Q15, and sent 3 documents (some of the responses to the IA's questions, VPA Text "also containing most of the information needed", and Forward planner as requested), and informed having sent some of the questions to EFI for answers. **T**he IA was copied in on the questions (Q1, Q2) sent to EFI. The FLEGT Facilitation provided feedback to Q2, Q3 and Q6. The IA acknowledged receipt, invited the auditee to keep collecting and forwarding answers, and informed the auditee that it will consider these answers during the next audit.

25/01/2018: the IA thanked the FLEGT Facilitation for providing feedback to Q2. The Facilitator replied committing support to the VPA Sec.

18/04/2018: Meeting with the FLEGT Facilitation who provided feedback to Q4, Q5 (agreed to provide the IA with a copy of the current Forward planner file; large version), Q6, Q9, and Q13.

27/06/2018: Following a reminder to the FLEGT Facilitation the IA eventually received from VPASU a copy of the Forward planner file prepared for the 6th JIC.

11/07/2018: investigation regarding Art. 14,2 to continue with a remaining, pending question about the Forward Planner (related to Qu.4). The rest regarding Art. 14,2 is considered closed to the IA's satisfaction (See 6.1.2.10).

13/07/2018: the VPA Secretariat provided feedback to Q12 and on **17/07/2018** the IA concluded on pending information (Notes of Technical JIC of November 30, 2016; 6th JIC Aide Memoire, complete with its annexes).

Results

The IA criteria included:

- Evaluation through the JIC of progress in implementation with reference to the schedule.

It was made clear that the initial schedule set out in Annex VII of the VPA (as per Art. 14,1) was only indicative and is now obsolete (showing 5 years' delay).

So far, the IA was only aware of the record of one revision in '2nd JIC Meeting 150610-12 AM.pdf', Annex 6: "Up-dated annex VII of the VPA", but the FLEGT Facilitation and the VPA Secretariat were not aware of any other revision. It was felt that it could be interesting to see what was done as part of that revision, asking EFI if necessary.

However the Facilitator did not think the implementation schedule annex needs to be somehow officially amended, as each (VPA) country, after signing, usually adopts a more in depth implementation schedule with updated milestones as things progress. The VPA is an agreement that is ratified into law, and amendments would typically not be on sections like this that involve schedules and milestones that would naturally not be set in stone (For revision of VPA annexes: see 6.1.2.19).

As the IA reads it, Art. 14,2 of the VPA in fact does not make it an obligation to amend Annex VII (i.e. the schedule set out in it), only to "evaluate the progress of implementation with reference to the schedule". And this may be achieved in a different way as explained below.

For the Facilitator, the VPA implementation monitoring and planning tool in Liberia, adopted by the JIC and accepted by the VPA Stakeholders, is the **Forward Planner**[38] (FP). The current version roughly targets 2020 for FLEGT licensing. The actual chart/schedule/tool format, etc. used and how milestones are added/ adjusted is ultimately managed by stakeholders, and supported by relevant projects. All of this ultimately falls under NMSMC and ultimately JIC oversight.

On 27/06/2018 the IA eventually received from VPASU a copy of the Forward planner file prepared for the 6th JIC. The FP appears to be based on the Legality matrix (with references to the LM down to Verifier level), with a view to addressing gaps towards FLEGT Licensing.

An IA Action remains in 6.1.2.11 (VPA Art. 14,2)**:** Confirm to what extent the "intention" of the VPA Art. 14,2 is attained with the Forward Planner.

7.3.1.11 VPA Art. 16,1-3 regarding stakeholder participation

This review was considered partly completed in the Audit 2 report (6.1.2.11) and partly in the Audit 3 report (6.1.2.12); therefore the discussion was moved hereto for archiving.

Art. 16,1 requires "Liberia to ensure that VPA implementation and monitoring are done in consultation with relevant stakeholders* participating via existing forest governance structures and by membership of the national body to be established as per Art. 16,2".

* Stakeholders shall include: industry, civil society, local communities and other people dependent on forests.

The IA's criteria included:

- Requirement implemented pursuant to the NFRL related to participatory management of forest resources.

According to IA's Legal expert, relevant references to participatory management of forest resources in the National Forestry Reform Law (NFRL) of Liberia include:

- Section 4.1 that provides for the functions of the FDA Board of Directors;
- Section 4.2 that provides for a Forest Management Advisory Committee comprising of at least seven members drawn from civil society, industry, academia, and forest dependent communities and loggers association;
- Section 19.2 that obliged the FDA to consult with stakeholders, and to publish each proposed regulation "for at least 60 days prior to the effective date in order to allow for public comments...".

Pursuant to Section 19.2, the FDA in the Ten Core Regulations issued Regulation 101-07 – Public participation -, which provides for public comments on the promulgation, amendment or revision of regulations, codes, manuals and guidelines, and also requires the FDA to establish forest stakeholders list.

"Existing forest governance structures" included: (1) FDA Board of directors; (2) Forest management Advisory Committee; (3) NGO Coalition on Forest issues; (4) National Union of Community Forestry Development Committees (NUCFDC), (5) National Union of Community Forestry Management Body (NUCFMBs); (6) National Union of Chainsaw operators; (7) Liberia Timber Associations, etc.; other forest governance bodies established in FDA documentation but whose activities

[38] The so-called mechanism and tool that has been adopted at the 2nd JIC, for "the Parties, working through the JIC, to evaluate the progress of implementation with reference to the schedule set out in Annex VII".

are not well known are National Forest Forum (NFF) and County Forest Forum (CFF).

Assessment of the real existence and activity of these stakeholders and structures, and of implementation of the requirement pursuant to NFRL: this is abundantly documented in the IA Inception report (3.5 VPA frameworks and processes, 3.6 Analysis of VPA stakeholders).

There is fair effort by Liberia to implement this requirement to consult stakeholders and get them involved in forest governance. For example, all the regulations drafted and/or being drafted are subjected to effective stakeholders consultation. This is a requirement of law that MUST be complied with before the regulation is considered legal. Hence, all those who advise and assist the FDA in regulatory reforms do ensure that the Regulation on public participation is followed.

The involvement of stakeholders in the VPA implementation is also reflected in their membership on the JIC [even if through the NMSMSC and LIC], and the granting of observer status to some.

To conclude, most provisions for participatory management of Liberia's forest resources in the National Forestry Reform Law (NFRL) have been implemented: there is much evidence of consistent involvement of key stakeholder groups in forest management, VPA implementation and monitoring through many instances. Multi-stakeholder governance of, or involvement in VPA implementation and monitoring can be confirmed although further monitoring is needed.

For future attention is the perceived weakness of the Liberian civil society (CS), for some stakeholders, in that civil society organizations (CSOs) are present and more or less involved but not necessarily active and being listened to as they could.

This was specifically confirmed by one informant: CSOs are already involved through CS' participation in the NMSMC, in the LIC and in the CS Independent Forest Monitoring and have seats at hand in all the relevant bodies named including the JIC. They need only be assertive. A number of CSOs are said to be fairly effective, but clear limitations exist in terms of their overall capacity and skills for research, sustainable advocacy experience compared to other developed societies, and resources to attract talented people to work in CSOs.

Donors and other forest sector stakeholders also need to work to developing appropriate feedback and redress mechanism that is responsive to the weaknesses and vulnerability of Liberian CSOs and public institutions and therefore provide a more appropriate means for CSOs to effectively contribute to forest governance. The work being done by ClientEarth with forest stakeholders by organizing legal working groups and building their capacities to use the various enforcement mechanisms under the relevant laws is one good step. But there is a need to have a feedback loop solely for the VPA process.

Worrying mentions of "intimidations" on Liberian CS activists has so far been one testimony that the IA will have to investigate further (whether threats or intimidations confirmed to have been received, or a general perception based on tangible examples or on rumors). One CSO mentioned being regularly accused of "acting against the nation's interests".

Relevant extract(s) from the 6th JIC meeting (June 13-14, 2018) Aide-memoire:

- **Issues raised by Stakeholders**

32. The Foundation for Community Initiatives (FCI) highlighted that CS [Civil Society] contributions should not be only limited to the last multi-stakeholder session as it is difficult to follow the previous JIC discussions. The EU proposed to broaden the participation to the entire JIC discussion.
FCI also highlighted the fact that CFMA systems need to be upgraded to ensure better documentation and archiving. The organization itself had previously raised issue with the proper documentation of 7 CFMAs.
33. The NGO Coalition further explained that CS is well aware of the resources limitations of FDA and is there to help raise concern to GoL on key sector issues.
34. GoL responded by saying that engagement processes need to be honest and constructive so as to work towards joint solutions, rather than done to impress external partners. GoL is committed to working in collaborative ways with CS and hope CS also lends credibility to the process.
35. The Liberia Chainsaw and Timber Dealers Union (LICSATDUN) wants the chainsaw milling sector to be prioritized so that its capacities for compliance can be built. The Union is concerned on knowing when the VPA Forward Planner will incorporate chainsaw milling milestones. FDA Community Department disclosed that the Liberia Forest Sector Project (LFSP) is working with LICSATDUN and FDA to design a project that would incorporate the Union as trainer of trainers to help communities manage their own projects. FDA also highlighted that FAO is currently supporting the review of the Chainsaw Milling Regulations.

Investigation

Information request - Consultation to the IA Legal expert

As per the VPA **Art. 16,1**: Pursuant to the National Forestry Reform Law (NFRL) of Liberia related to participatory management of forest resources, Liberia shall ensure that implementation and monitoring of the VPA are done in consultation with relevant stakeholders participating via existing forest governance structures and by membership of the national body to be established as per Art. 16,2.

Question: ***What are the relevant references to participatory management of forest resources in the NFRL?***

Question: ***What are these "existing forest governance structures"?***

Question: ***What is your assessment of this requirement being implemented?***

Question: ***Do "stakeholders" include industry, civil society, local communities and other people dependent on forests (as per Art. 16, 1)?***

As per the VPA **Art. 16,2**: Liberia shall establish a national committee to monitor VPA implementation, made up of representatives of relevant Government agencies and other relevant stakeholders.

Question: ***Has such national committee been established?*** [i.e. the NMSMC maybe?]

Question: ***What evidence (legal act, procedures) exists to support this statement?***

Question: ***Do the members include Government agencies, industry, civil society, local communities and other people dependent on forests (as per Art. 16, 1 and 16,2 combined)?***

As per the VPA Art. 16,3: The Union shall hold regular consultations with stakeholders on VPA implementation, taking into account its obligations under the

1998 Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters.

Question: ***Are there mechanisms in place for the Union, or the EU Delegation to Liberia on behalf of the Union, to hold regular consultations with stakeholders on VPA implementation in addition to the JIC and the NMSMC?***

Question: ***Would you say that in doing that, the Union takes into account its obligations under the 1998 Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters?***

History of interaction with the IA Legal Expert:

03.01.2018: TL sent a reminder plus a comment; **15.01.2018:** the IA Legal expert provided initial answers.

19.01.2018: TL asked one further question and informed about two other pending questions regarding VPA Art. 16,3 on which TL should follow up with the relevant people. As of **23.01.2018:** further input still needed from the expert.

The following references were found regarding what Liberia has put in place:

- 1st JIC (AM, 5): Liberian Implementation Committee (**LIC**) established;

  "Liberia has already established the LIC, which guides and informs its representation to the JIC. This Committee brings together government departments and stakeholders, mainly representatives of groups that were involved in the negotiations. It is chaired by the Minister of Agriculture. The LIC aims to promote transparency and multi-stakeholder participation in the implementation of the VPA. The Committee meets regularly to oversee the progress of VPA implementation and to provide advice to guide the joint talks in preparation for the formal VPA structures". ('Progress report, "Moving Towards VPA Implementation", 2011-2012')

- 1st JIC (AM, 5): a broader **NMSMC** (National Multi-Stakeholder Monitoring Committee) [being the national body to be established as per this Art. 16, 2] established, including community representatives and meeting monthly;

- 1st JIC (AM, 6): **Inter-agency coordination committee** inaugurated "to strengthen coordination between Ministries and government agencies";

- 2nd JIC (AM, 8): Three [above-mentioned] participatory mechanisms established "*to oversee and contribute to the implementation of the agreement on the Liberian side*";

- 4th JIC (AM, 3): "*All the necessary structures [now] exist to move the VPA forward*".

The IA was provided with information relative to the member organizations and representatives to the LIC and NMSMC, the functioning of these structures and their mutual links (IA Inception report, Chap. 3.5 and 3.6).

The review under VPA Articles 16.1-2 was considered complete and satisfactory. The questions regarding VPA Art.16,3 have now been cancelled as lacking relevance for the IA.

The review continued in the Volume 1 of this Audit 4 report.

7.3.1.12 VPA Art. 19,1-2

This review was considered completed satisfactorily in the Audit 2 report (6.1.2.13); therefore the discussion was moved hereto for archiving.

Investigation

Art. 19,1 of the VPA: **The Parties shall establish a Joint Implementation Committee (JIC) to facilitate monitoring and review of this Agreement. The JIC shall also facilitate dialogue and exchanges of information between the Parties.**

Question 6: ***What evidence (e.g. legal act, decree) exists to support the fact that the Joint Implementation Committee (JIC) was formally established?***

Art. 19,2 of the VPA: The Parties shall nominate their representatives on the JIC, which shall be co-chaired and take its decisions by consensus.

Question 7: ***While we are aware that "the members of the Liberian Implementation Committee (LIC) chaired by the Chairperson of the FDA Board of Directors are the statutory JIC members representing Liberia at the JIC meeting" as per our draft Inception report, can you provide the IA with a list of the LIC member organizations and their representatives, so that we understand the exact composition of the JIC on the Liberia side?***

Question 8: ***Can you describe the decision-making process within the Liberia side?***

Question 9: ***Can you provide the IA with any evidence (e.g. legal act, procedures) for how the Liberian Implementation Committee (LIC) was formally established and is functioning?***

Question 10: ***What is the link from the LIC to the NMSMC?***

Results

The IA criteria included:

- Joint Implementation Committee (JIC) formally established;
- Representatives on the JIC nominated by each Party;
- Decisions by consensus.

The FLEGT Secretariat and the VPA Facilitation clarified that:

- All governance bodies of the VPA (LIC, JIC, IACC, and NMSMC) were established as part of the VPA negotiations. They were functional from the signing of the agreement in 2011 but not formally established until the VPA act was ratified at the end of 2013.
- There is no separate act establishing the JIC.
- The JIC is formally established by the VPA Annex X and all Aide memoirs from the JIC meetings are published.

Table 6: Names of the LIC members with their respective organizations

NO	INSTITUTIONS	REPRESENTATIVES
1	LIC	Chairperson (*Chairperson of the FDA Board of Directors*)
2	NUCFDC	President
3	MoCI	Minister
4	MFDP	Minister
5	FDA	Managing Director
6	LRA	Commissioner General
7	NBOC	Concession Advisor
8	MOJ	Minister
11	NAO	National Authorizing Officer
12	CSO	Facilitator
13	National Investment Commission	Chairman
14	MoA	Minister
15	Liberia Timber Assoc.	President

Document research and further discussions with the FLEGT Secretariat and the VPA Facilitation provided the following information:

- Representatives on the JIC:
  - For Liberia: the members of the Liberian Implementation Committee (LIC) chaired by the FDA Board of Directors' Chairperson;
  - For the EU: EUD Head;
- JIC is co-chaired by the Union (EUD) and Liberia (LIC);
- Decision-making process, Liberia side: the **LIC**, advised by the **NMSMC** and the **IACC**) is the body that decides for the Liberian delegation what topics should be addressed at the JIC; the **Technical JIC** also addresses technical problems that arise during implementation.

The NMSMC feeds into the LIC that feeds into the JIC.

Intended difference between NMSMC and LIC: the LIC is the senior political level (ministers, ambs); NMSMC has reps from the same bodies but at a technical level, who should inform the higher level of the LIC; and then the LIC should feed into the JIC. LIC is supposed to agree on a date for the next JIC, and to convene (by VPA Sec.) like 1 month before the JIC.

Since ratification, though, the NMSMC has proved to be strong (in Liberia) and it meets every month, so it has in fact somehow gained more visibility than the LIC… Plus, as (political) people change, the institutional memory is with the technicians. So the tendency is that same person attends the LIC meetings and sometimes even the JIC.

The role of the Facilitation is to try hard to get the medium and higher political levels involved and keeping momentum, making decisions. It may not seem to be so much the case, but people do really care about hierarchy (i.e. decisions must be made by authoritative levels).

7.3.1.13 VPA Art. 19,3a, 3b, 3d, 3e, 3f, and 3g

This review was considered completed in the Audit 2 report (6.1.2.14); therefore the discussion was moved hereto for archiving.

Investigation

Art. 19,3: **The JIC shall consider any matter relating to effective VPA implementation, in particular:**

(a) meet at least twice a year;

(b) prepare the agenda for its work and terms of reference for joint action;

(d) establish a co-chair arrangement for its meetings;

(e) ensure that its work is transparent and that information about its work and decisions is made available to the public;

(f) establish working groups or other subsidiary bodies where necessary (in areas requiring specific expertise); and

(g) publish an annual report (Details of the content in Annex IX)".

Question 11: ***Can you please provide details of the Second Technical JIC held in August 2017?***

Question 12: ***Are the results (minutes or aide memoire) of the Technical JIC meetings and associated working documents published on the FDA website? We find that the Information section of the FDA website is currently unavailable.***

Question 13: ***Can you provide any information as evidence that a co-chair arrangement is in place (i.e. is this a documented or an ad hoc arrangement)?***

Question 14: We understand that the agenda is prepared by a "Support team" (VPA Secretariat, FLEGT Facilitation, SGS, VPA SU) under the lead responsibility of the VPA Secretariat and following a round of consultations (FDA, EFI FLEGT Facility, NMSMC, EUD, UK DFID, etc.). ***Is this correct?***

Question 15: ***Can you explain what preparation of "terms of reference for joint action" has so far consisted in?***

Question 2 (in separate set): ***In relation to Art. (e) above, please advise how the information about JIC's work and decisions is made available to the public (in reports transparently reflecting such work and decisions): Aide-Memoires of JIC meetings, Annual reports, others?***

Question 3: ***In relation to Art. (f) above, please advise whether such measures have been adopted until now and in which circumstances.***

Question 4: ***Please advise whether the 2015 (2015 Joint Annual Report "to be published before the end of 2016" as per AMs) and 2016, and now 2017 Joint Annual Reports have been published, and if not why?***

Results

Since the VPA was enforced on December 1, 2013, the **meetings of the JIC** took place and were (co-) chaired as follows:

- First: May 24-29th, 2014 - Co-chairs: Hon. Florence Chenoweth, Minister of Agriculture, and Ambassador Attilio Pacifici, Head of the Delegation of the European Union to Liberia;
- Second: June 10-12th, 2015 - Co-chairs: Sister Mary Laurene Browne, OSF, Chair of the Board of Directors of the FDA, and Ambassador Tiina Intelmann, Head of EU Delegation;
- Third: January 20-22nd, 2016 - Co-chairs: same as previous JIC;
- Fourth: September 21-23rd, 2016 - Co-chairs: same as previous JIC;
- Fifth: April 05-07th, 2017 - Co-chairs: same as previous JIC;
- Sixth: June 13-14th 2018 - Co-chairs: Hon. Harrison S. Karnwea Sr., Chair of the Board of Directors of the FDA, and Ambassador Hélène Cavé, Head of the Delegation of the European Union to Liberia; and
- Seventh: February 25 - March 1, 2019 - Co-chairs: same as 6th JIC.

Clearly, the JIC has not managed to meet "at least twice a year" (only once in 2014, 2015, 2017, 2018, and 2019 so far). Delays in 2014 and 2015 are partly due to the "Ebola crisis".

The **co-chair arrangements** made for the JIC meetings are shown in the meeting agendas and aide-memoires.

The VPA (Article 20, 1) designates the representatives of the Parties responsible for official communications concerning implementation of this Agreement as being:

- For Liberia: The Minister of Agriculture; and
- For the European Union: The Head of the Delegation of the Union in Liberia.

The EU Ambassador usually sends a letter saying he/she will attend such part (e.g. formal session) of the JIC and designates e.g. the Head of Sector at the EU Delegation for the technical sessions. It is the same thing on the Liberia side, actually coming from the FDA Board of Directors Chair*. (Meeting with the FLEGT Facilitator)

* The Minister of Agriculture is also supposed to chair the FDA BOD however, following the PUP scandal there was a Presidential order saying the President now designates the FDA BOD Chair. So it's now the FDA BOD chairperson who, in reality, represents the GoL.

JIC Technical Meetings also took place on:

- November 30, 2016 - Co-chairs: Harrison S. Karnwea, Sr., FDA Managing Director and Alberto Menghini, Head of Sector, EU Delegation;
- August 9, 2017 - Co-chairs: Darlington S. Tuagben, FDA Managing Director and Alberto Menghini, Head of Sector, Delegation of the European Union;
- December 4, 2017 - Co-chairs: same as above.

Date of the **next JIC meeting**: The 8th meeting of the next formal JIC is scheduled for October. Liberia will take the lead in organizing the next meeting. (7th JIC Aide-memoire, last paragraph).

Regarding **preparation of the agenda for JIC's work and terms of reference for joint action** (Art. 19, 3b), the IA understands that in recent years the agenda has been prepared by a "Support team" (VPA Secretariat, FLEGT Facilitation, SGS, VPA SU) under the lead responsibility of the VPA Secretariat and following a round of consultations (FDA, EFI FLEGT Facility, NMSMC, EUD, UK DFID, etc.). Final decisions on the JIC agenda are taken by the Liberia and EUD heads. There are no such terms of reference, but action points structured by the JIC with assigned timelines (Forward planner).

Regarding the question "how is the **information about JIC's work and decisions** made available to the public" (Art. 19, 3e): the meeting agendas and aide-memoires as well as the annual reports are intended to transparently reflect such work and decisions:

JIC meeting agendas are circulated and all aide-memoires (signed, with annexes) are published on the FDA website[39]. The Liberia and the EU Joint Annual Report 2014 is also published in the same place.

The IA has now been provided with the two technical JIC (1st and 2nd technical JIC 2017) meetings' notes, the last one still in draft form. The IA is still missing the Technical JIC meeting's notes of November 30, 2016. But only the '1st Technical JIC Notes of the 5th JIC (2017) are published on the FDA website[40], not for the other two JIC Technical Meetings.

The IA however raised an **ISSUE** (ref. **MII 6**) in the IA Progress DB about this:

ISSUE MII 6
Impact level: Medium
Identified ISSUE: Official notes missing for (at least) two of three JIC Technical Meetings (161130, 171204)
Recommendation: Publish outstanding / future notes for JIC Technical Meetings.
Required follow-up: update for any new JIC technical meeting held.

Regarding the publication of **JIC Annual reports** (ARs) by the FDA, the related analysis of the VPA Article 19,3g conducted in the Preliminary Audit 1 report is now covered in the follow-up of previous issues in this report under 7.3.14.

Regarding the JIC establishing **working groups or other subsidiary bodies** where necessary (in areas requiring specific expertise), no responses have been received whether such measures have been adopted until now and in which circumstances[41]. Evidence however suggests that the work is divided up between all the actors involved in JIC's work (see above) including multi-stakeholder working groups (including among NMSMC members) and commissions.

The JIC's "Working Group on the IA" created by the JIC, "dedicated to the steerage of the IA and the review of reports" (6th JIC's Aide memoire, June 2018, Art. 26), is a relevant example of this.

Further monitoring is needed for on-going compliance.

Extract from the 7th JIC (Feb. 25 - March 1, 2019) Aide-memoire:

57. The FLEGT Facilitation office recommended that to ensure that the JIC is equipped to fulfill its mandate as a decision-making body, it is crucial that the other VPA governance structures such as the JIC-mandated working groups, the National Monthly Multi-Stakeholder Meeting and the Liberia Implementation Committee meet regularly and work together on the relevant technical issues.

[39] http://www.fda.gov.lr/vpa-flegt/partners/vpasu/aide-memoire/
[40] http://www.fda.gov.lr/wp-content/uploads/bsk-pdf-manager/1st_Technical_JIC_official_notes_81.pdf
[41] Qu. 3 in Information request of 27/12/2017 regarding VPA Art. 19,3 c, e, f, g.

7.3.1.14 VPA Art. 19,3c, Art. 21,3, and Art. 24,7

This review was considered completed in the Audit 2 report (6.1.2.15); therefore the discussion was moved hereto for archiving.

Investigation

Information request

28/12//2017: message sent to the VPA Secretariat and the FLEGT Facilitation.

Art. 19,3c requires the "JIC to consider any matter relating to effective VPA implementation, in particular:

(c) Establish its own rules of procedure.

Art. 21,3 requires the "JIC ToR and procedures to be published".

Art. 24,7 requires the "JIC to establish the working procedures for arbitration [pursuant to Art.24, 4-5-6]".

The question regarding the JIC's rules of procedure (incl. for arbitration) is regarded as marginally but still relevant to the IA in case disputes would arise from IA's reports.

The related IA criteria for these articles therefore included:

- JIC's own rules of procedure established;
- JIC's ToR and procedures published;
- Of relevance to the IA (See Art. 24,1): JIC's procedures for arbitration established.

Question 1: ***Please can you update the IA on the status of these two documents?***

History of interaction with auditees:

09/01/2018: The IA sent a reminder, asking when the recipients intended to provide initial answers and providing an MS Word file to collect these answers.

19/01/2018: The IA sent another reminder, asking to receive further answers by 22/01/2018 or the IA will not be able to incorporate them in the forthcoming audit report and the requested information will be reported as unavailable from the responsible institution at the time of closing the report.

As of 31/07/2018: no inputs have been received as yet despite several reminders (180109, 180119, 180418, 180703, 180707**)**.

Results

JIC's TOR are established in the VPA itself, which is a public document.

Looking for evidence about JIC's rules of procedure, the IA has so far collected the following documents or information regarding 'Rules of procedure for the functioning of the JIC' and 'Working procedures for Arbitration of the VPA':

- **Rules of Procedure**, "zero draft Jan 7 2013";
- EU draft discussed at 1st JIC, GoL to send comments for adoption by 2nd JIC;
- 2nd JIC: MOJ to send comments to EU and LIC for adoption by 3rd JIC;
- 150918, comments sent by VPASU to EUD o.b.o. the LIC;
- 3rd JIC: MOJ to resubmit comments to EU for formal consideration, for adoption by the 4th JIC;

- (Undated) Draft '**Working procedures for Arbitration**' with Reviewers' comments.

As for an update on the status of these two documents, they are still at draft stage and there is some back and forth between EU and Liberia to finalise those (170705, EFI). Following several reminders, no responses have been received still.

The IA raised this situation as an **ISSUE** in the IA Progress Database (ref. **MII 7**):

ISSUE MII 7
Impact level: Medium
Identified ISSUE: JIC's own rules of procedure not established, not published, to incl. arbitration
Recommendation(s): Establish, publish JIC's rules of procedure, to incl. Arbitration.

The IA will monitor this issue. It is expected and should be verified that the JIC's rules of procedure are established in accordance with the JIC's TOR in the VPA.

Follow-up during Audit 3: Rules of procedures and arbitration are under review by the EU Delegation. (EFI, 05.02.2019)

7.3.1.15 VPA Art. 25 and Art. 29

Since this review was considered completed in the Audit 2 report (6.1.2.17), the discussion was moved hereto for archiving.

Art. 22,1 states "Either Party may **suspend application of this Agreement** in the event that the other Party (a) fails to fulfill its obligations … under this Agreement, or (b) fails to maintain the regulatory and administrative measures and means required to implement this Agreement, or (c) acts or fails to act in a way that poses significant risks to the environment, health, safety or security of the people of either the Union or Liberia. The decision on suspension and the reasons for that decision shall be notified to the other Party in writing"; and

Art. 29: "…either Party may **terminate this Agreement** by notifying the other Party in writing. This Agreement shall cease to apply 12 months after the date of such notification".

The related IA criteria include:

- Both articles are relevant to the IA contract;
- Justification (no suspension for no-cause) and procedure respected;
- Possible escalation from Art. 25 on Suspension;
- Subject to Art. 24 on dispute resolution.

According to the IA's Legal expert, **Suspension** of the application of the VPA is possible under Art. 25 upon either Party notifying the other Party in the event of perceived failure, with 30 days notice. Its **resumption** follows the same process and timeframe.

As to what is the internal procedure of each party for notifying the other Party for **Suspension or Termination**, the same as for initial ratification or simpler: for Liberia, because the VPA is a special legislation, it can be terminated under Liberian law only by way of its repeal by the Legislature and approval of the repeal

act by the President. This is the requirement for repealing all acts and statute in Liberia (and many other countries).

As a practical matter, any notice duly served on the EU by the competent authority of Liberia (like the Liberian Co-Chair of the JIC or similar official) to the effect that Liberia (suspends or) terminates the Agreement may not ordinarily be questioned as to whether the Suspension or Termination decision was validly taken or not.

Further legal consultation would be needed as to what the EU's internal procedure would be. Like for 'Amending the body of the VPA' **(**Art. 26,1 below), the IA's understanding is that the procedures followed by the EU for amendment is generally the same as for the original ratification.

7.3.1.16 VPA Art. 26,1

This review was considered completed in the Audit 2 report (6.1.2.18); the discussion was therefore moved hereto for archiving.

Art. 26,1 in essence provides that **Amending the VPA** requires (i) either Party to submit a proposal to the JIC, (ii) a recommendation from the JIC, and (iii) each Party to approve it in accordance with its own internal procedures. However Art. 26,3 (See the next section) describes a simpler process for the Annexes; this therefore applies to **the body of the VPA.**

A clear procedure is expected to be in place for this purpose. What are therefore the conditions in the VPA for the Parties to mutually agree on a revision of the body of the Agreement?

Legal basis – EU side

The EU-Liberia FLEGT VPA has the status of a treaty[42] (Legal Basis: Treaty FEU, Article 207). The VPA was indeed ratified in the EU based on Articles 207 of the treaty on the Functioning of the EU, and is expressly indicated to have the status of a treaty, which is binding and enforceable.

In terms of amendment, the IA's understanding is that the procedures followed by the EU for amendment is generally the same as for the original ratification.

Legal basis – Liberia side

The VPA has the status of a binding and enforceable law in Liberia. It is similar to, and has the same status as any other Liberian statute enacted by the Liberian legislature and approved by the President of Liberia.

In terms of the procedures for approving any amendment of a VPA, the rule in Liberia is that the amendment of any treaty (like the VPA) is that it must be approved in the same manners as the original approval of its coming into effect. This means that any amendment of the VPA will first have to be signed by the relevant executive officers and then approved by the President who thereafter submits it to the Legislature for ratification. Upon the Legislature ratifying the amendment by concurrence of the two chambers of the Legislature, the amendment is then sent back to the President for his/her final approval of the ratification act. Thereupon the amendment becomes effective and binding when printed in hand bill.

[42] http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=8985&back=9341

7.3.1.17 VPA Art. 26,3

This review was considered completed in the Audit 2 report (6.1.2.19) and was therefore moved hereto for archiving.

Art. 26,3 in essence provides that **Amendments to VPA Annexes** can be **adopted by the JIC** and be enforced.

A clear procedure is expected to be in place for this purpose. This potentially concerns all annexes, and particularly Annex II on the LAS, therefore *it covers any amendment arising from a recommendation from the IA*. What are therefore the conditions in the VPA for the Parties to mutually agree on a revision of Annexes?

According to this Article, the JIC may lawfully amend all of the VPA annexes and particularly Annex II on the LAS.

It was questionable however, whether such enforcement of amendments to VPA Annexes (i) is subject to approval by each Party *in accordance with its own internal procedures*, pursuant to Art. 26,1, and what the respective internal procedures of the Parties would be for such amendments, the same as for the body of the VPA (the Annexes forming an integral part of the Agreement, pursuant to Art. 27) or not.

According to the IA's Legal expert, the language of Article 26(3) does not contain any provision that, subsequent to the JIC's approval of amendment of an annex, there will be a further approval by each party "in accordance with its own internal procedures". There are clear reasons for this.

- First and foremost, an action of the JIC requires the consent of both the EU and Liberia. Hence, before the JIC (meaning the EU and Liberia together) takes any decision amending an annex, a party that believes it needs to comply with its internal approval for such amendment to be final will either (i) seek such internal approval before agreeing to the JIC's decision; or (ii) will give notice of such internal approval requirement and therefore request that the amendment be pursued under Article 26(1), which provides for each party to complete its internal approval process and then gives notice.
- The other reason for not requiring subsequent internal approval after a JIC joint amendment is that [such requirement would] undermine the whole essence of a joint amendment by the JIC and also lead to delays, if not waste of time.

The fair interpretation therefore is that the language of Article 26(3) is limited to joint amendment by the JIC without reference to any subsequent internal approval by each party.

In **conclusion**, the revision of VPA annexes is to be done by the JIC acting as a body. Once the parties jointly agree to an amendment or revision of any VPA annex, neither the EU nor the GOL is expected or required to take any further internal action after having agreed with the other party in the JIC.

7.3.2 Annex II - Introduction of Legality verification in the VPA

This review was considered completed in the Audit 2 report (6.1.3) and was therefore moved hereto for archiving.

7.3.2.1 Relevant references in the VPA

The following references (of VPA Articles / Annexes) are used in the next section:

- Ann. II, 1c
- Ann. II, 1d3; 1d4;
- Ann. II, 1d11; 1d12
- Ann. II, 4.1a

7.3.2.2 Discussion

Ann. II, 1d3: "*Legality verification* [LV] systematically determines compliance with the requirements of the legality definition [LD]". LV can therefore be assumed to refer to '*Verification of compliance* with the legality definition' that is the 2nd element of the LAS, while LD is the 1st element of the LAS (as per **Ann. II, 1c**).

The LD is further specified in the entire Section 4 of Annex II: "The legality definition consists of 11 principles, each of which is divided into a number of indicators representing the legal requirement that must be complied with. Each indicator is equipped with verifiers that are used for determining whether a private-sector operator or government agency complies with the legal requirements covered by the indicator concerned". (**Ann. II, 4.1a**)

But LV can also be taken in the broader sense of "legality assurance" as in LAS (LAS in fact translates as LVS -Legality Verification System- in "French-speaking" VPAs). This is because the LD itself also covers requirements pertaining to other elements of the LAS than the LD, as well: Principles 6 (Traceability), 7 (Processing), 9 (Taxes) and 10 (Export) in the Legality matrix, mainly, include requirements on the use of the chain of custody system (COCS) as introduced in Ann. II, 1c as being the 3rd element of the LAS. In the other way around, the operation of the COCIS (the Information System supporting the COCS, defined in the VPA) also includes elements of verification; in this regard the COCS is a tool for both data management and verification of compliance in relation to some parts of the LD, and it cannot be separated from LV. Furthermore, some of the bodies defined below as being responsible for LV are also involved in overseeing other elements of the LAS.

In **conclusion**, LV is the 2nd element of the LAS; but it refers to broad compliance with all requirements of the LD, the 1st element of the LAS, and as such overlaps with at least the 3rd element of the LAS (COCS).

Ann. II, 1d4: "[LV] is the responsibility of government bodies designated by the legislation and by the VPA". The VPA identifies the (existing) government bodies that are responsible for LV in the legislation and establishes new ones: the LVD (Ann. II, 3.1a) and the LLD (Ann. II, 3.3a). It also refers to all other responsible government bodies (Ann. II 3.2a,b).

In accordance with **Ann. II, 1d11-12**, the outlines of LV [among others] will be *further developed and put into practice* during implementation of the VPA [in this regard, LV development and implementation is therefore "Work In Progress"]. This Annex II [only] describes how, *in principle*, the LAS will work *in practice.*

The identification of LV criteria under this independent audit will therefore continue through the analysis of project implementation, in particular as part of the contracting of the external service provider (ESP) and related *project design before* contracting (ToR) and *project development after* contracting.

This review might in future be merged with 'Implementation of Legality verification' (from 6.1.8) as part of a whole section on 'Legality verification' in Section 7.3 for archiving of related reviews.

7.3.3 Annex II - Introduction of the chain of custody system (COCS)

This review was considered completed in the Audit 2 report (6.1.4) and was therefore moved hereto for archiving.

7.3.3.1 Relevant references in the VPA

The following references (of VPA Articles / Annexes) are used in the next section:

- Ann. II, 1c
- Ann. II, 1d5; 1d6; 1d7
- Ann. II, 3; 3.1b.

7.3.3.2 Discussion

Ann. II, 1c identifies 'Chain of custody system' as the 3rd element of the LAS.

Ann. II, 1d5 - The chain of custody system (COCS) is applied to control the timber supply chain from the forest to the *point of export* or *sale on the domestic market*.

The COCS is backed by the NFRL law (13.5 a, e) where it is "established for *all Timber* and to *import, transport, process, or export* Timber", so for both the export and domestic markets.

As per **Ann. II, 1d6**, the COCS includes: (i) operational controls by companies, (ii) verification by the COCS manager*, and (iii) an information system** where data from both (i) the operational control and (ii) verification activities are stored and analyzed.

* Who "the COCS manager" is, remains to be clarified. It likely refers to the manager of the COCS Section in the LVD.

** The "information system" most likely refers to the "chain of custody information system" (COCIS). This is confirmed where the COCIS acronym is introduced for the first time in the VPA (Ann. II, 4.2d) and it is then used in many other places.

According to **Ann. II, 1d7**, a COCS has been *in operation since before 2009*; it was *built and is operated by an external service provider*; its design *largely meets the LAS requirements*; and *it will eventually be transferred to the FDA*.

Evidence found on the existence of such COCS, built and being operated by an external service provider since before 2009, includes that:

- FDA Regulation No. 108-07 on "Establishing a Chain of Custody System", in Section 21 (Establishment, Scope, and Administration) provides the following:

  (a) The Authority shall establish and operate a Chain of Custody System to track Logs, Timber, and Wood Products from forest to processing to domestic market or export.

  (b) The Authority shall establish and maintain an electronic Chain of Custody database containing— (1) Information on all Logs, Timber, and Wood Products tracked under the Chain of Custody System; and (2) Information on forest-sector fees assessed and paid

on all Logs, Timber, and Wood Products, and in connection with any associated Forest Lands.

(c) The Authority may delegate, in whole or in part, day-to-day operation of the Chain of Custody System and maintenance of the Chain of Custody database to a private contractor, subject to oversight and auditing by the Authority.

(d) The Chain of Custody System established by this Regulation shall begin operation on September 30, 2007.

- An initial agreement with SGS SA (Switzerland) as external service provider to manage the national timber CoCS in Liberia was first concluded in December 2007, with Helveta Ltd. (UK) being the IT (Information Technology) solution provider (See also 6.1.7.1);
- In 2012, Helveta had failed to provide in due time and maintain a fully workable software and, since 2008, a total of four IT solutions have in fact been developed and used: 1) SGS-Helveta "LiberFor", 2) Excel databases, 3) "LiberTrack" (local developer), and finally "LiberTrace", an SGS's in-house solution (SGS meeting June 19, 2017);
- The current SGS Service Agreement with the GoL is a continuation from the historical SGS contract of December 2007; it includes management of the national COCS and operating the LiberTrace software (SGS meetings June 19, 2017; April 6, 2018; email April 9, 2018 – See also table in 6.2.3.2, Current establishment of the LVD and handover process); and
- As per the IA ToR, 4.2, "The overall task of the independent auditor is to monitor implementation of the systems established to verify legal compliance with all aspects of the LAS. The key issues to check will include compliance with the legal requirements established in the legality definition, *the chain of custody* and verification by the [LVD] and the [LLD] (…). The method to be used must be evidence-based and include documentary checks and field or on-site visits. Specific tasks of the independent auditor will be to: … (b) verify that *the chain of custody system, a key component of the LAS, is effective and functioning appropriately, confirming that requirements are fulfilled from pre-harvesting operations to export or sale on the domestic market*".
- On November 22, 2017, IA experts were provided with LIBERTRACE user accounts and enabled to access and explore the system by themselves for auditing purposes.

The IA has requested, and has so far been denied, copies of the contracts between SGS and GoL and between SGS and DFID. The IA is considering raising an issue about it.

<u>Evidence that the COCS by its design largely meets the LAS requirements:</u>

- "…a COCS that largely complies with the LAS requirements has been in operation…" (**Ann. II, 1d7**);
- The audit shows … a satisfactory IT solution for the COCIS ... Two of the three pillars that contribute to the approval of current export permits in the COCS prefiguring the future FLEGT Licenses - traceability and verification of tax payment - look technically robust. (IA's Preliminary Audit 1 report, Final draft 180221);

- SGS is said to have conducted it's own assessment ("LiberTrace fully operational" report mentioned for further investigation with SGS: research so far has shown that the report is not available for download from the FDA or SGS LiberTrace websites);
- A contract was being tendered out for "Technical assistance to support the Government of Liberia, the EU and the UK-DFID in the evaluation of the LiberTrace software". "The purpose of this assessment is to identify what will be required to sustain, maintain, operate and upgrade LiberTrace at the end of the current SGS contracts"[43]. (16 July 2018, European Forest Institute).

Evidence of SGS's agreement to eventually transfer the COCS to the FDA:

- In the long run, the LVD is tasked "to verify compliance with the Legality definition and operate the COCS" (**VPA Ann. II, 3**). The IA understands this to currently include implementation of the COCIS, CoC inspections, and field audits of legality verification by other departments;
- "A service provider will be contracted on a 'build, operate and transfer' (BOT) basis for the first five years to develop the necessary verification methodology and to build the capacity of the FDA departments and divisions involved in implementing the LAS." (**VPA Ann. II, 3.1b**);
- A joint EU and UK program of support for VPA implementation over the period 2013 to 2018 has provided for, *inter alia*, "(1) the establishment on a Build-Operate-Transfer (BOT) basis of a [LVD] within the [FDA] with responsibility of, inter alia, verifying compliance with the legality definition and *tracking harvested timber from forest to export*" (IA ToR, 1.5);
- The current SGS contract expires in October 2018 and includes an obligation to transfer the (CoC + LV) capacity to FDA LVD; implementation of a handover plan to FDA Regions 1-2, 3, 4 + HQs was in progress (SGS meeting June 19, 2017);
- "... The support provided by SGS will end in October 2018. By then, the LVD shall be able to operate independently, including managing and running the LiberTrace software. The LiberTrace software shall be fully developed and the Government of Liberia equipped to run and maintain it; that includes the ability to update or upgrade functionalities".
  (EFI, ToRs_LiberTrace IT assessment.pdf, July 2018)
- SGS has published a Handover Plan, a Detailed Handover Plan (per FDA Region), and regular progress reports, including a Handover assessment report (SGS meeting April 6, 2018). Research has shown that these reports are not available for download from the FDA or SGS LiberTrace websites.
- "… SGS has been contracted for 5 years, split into 2 phases: development of the system (2 first years) followed by a 3-year phase to transfer the system to the FDA. A plan for rolling out the full legality verification system was scheduled to be presented by the 4th JIC meeting in September 2016. … The

[43] As of 14.01.2019, a contract has been awarded (to Kooper in Cameroon), work started in December 2018, and a report is due by February 2019 on the first, technical part of the assignment. A second, optional part aims to the provision of technical assistance to the FDA (EFI Update). The IA is aware of the ToR and hopes to have access to the report. The IA's call is that many of the IA's current investigations would find some answers or some relevant information in the report. As of 05.02.2019, the assessment is ongoing and should the outcome be one that EU, DFID and the GoL deem is necessary to share with the IA, they will do so.

software was supposed to be ready by March 2015. Until that date SGS operated the CoC. The first field testing and mock audits began mid-2014. The technical requirements were discussed and agreed in the Technical Advisory Committee (TAC). However, the Ebola crisis stopped the LVD's field activities for one year (from May 2014 to April 2015) causing delays in the whole process. The work nevertheless continued on the development of new software (Libertrace). As the software was about to be completed, field-tests were scheduled in the June-October 2015 period. In January 2016, SGS reported an initial user acceptance test of the software performed in the previous June. The field tests were completed in December 2015. The helpdesk has been established and the LAS auditor training-of-trainees has been performed. SGS is supposed to hand over the LVD to the FDA by the end of 2018. On the basis of the latest information available, the procedures of the CoC still need to be updated. Ongoing work includes information management, the enforcement of the Code of Foresting Harvesting Practices as well as the non-compliance rules". (Contractor's O&M, 1.1.3.2)

- Background. "Under the step-by-step, phased handover process agreed by FDA, DFID and SGS, LVD Head office will be handed over in the course of the year, 2018. The handover process encompasses 3 stages: Pre-handover: training and readiness assessment; Handover: In the Handover phase the FDA/LVD staff will be expected to execute their task independently under SGS supervision; and Post-Handover: During this phase the LVD is supposed to take full responsibility under SGS monitoring only. 6 Conclusion. This process must be in place by the end of February 2018. All the LVD personnel have been trained and are aware of the process. SGS personnel must step back and let LVD employees performing their duties. However SGS remains responsible of the full process until October 2018. …
(20180215_EP_MANAGMENT_Handover_Version_02.pdf)

- Current status: "Recent evaluation of the LVD[44] have shown that all functions and tools put in place by SGS have not yet been transferred to the LVD. In particular, the LiberTrace software is being used on daily basis by LVD staff but still administered, hosted and managed by SGS. At the recent 6th [JIC] meeting of the VPA (June 2018), "The FDA clarified that the LVD does not need to take over all functions overnight but a step-by-step approach is advisable to allow LVD to take over gradually from SGS. Some functions could remain within the scope of SGS and other given to LVD. The MD suggested further investigation on this possibility."
(EFI, ToRs_LiberTrace IT assessment.pdf, July 2018)

- Extract from the FDA MD speech at the 6th JIC[45]: "The VPA … calls for the EU to build the capacity of the FDA through [SGS] which is therefore responsible to build the capacity of the [LVD] in every expected measurement as per the Agreement before handling over the operation. *Although SGS has been partnering with FDA for nearly twelve years there appears no measurable trace of capacity building program that could equip the Liberian side to independently perform the task beyond the existence of the SGS.* In light of

[44] The IA is indeed aware of an 'LVD readiness assessment' (to take over from SGS at the end of October 2018) having been completed in May 2018 (See Rothe & Speechly, in 6.3.2.4).
[45] Liberia, EU End 6th JIC Conference -As FDA boss sounds stern caveat to VPA Implementing Partners, POSTED ON JUNE 19, 2018 (http://www.fda.gov.lr/liberia-eu-end-6th-jic-conference-as-fda-boss-sounds-stern-caveat-to-vpa-implementing-partners/)

this the FDA boss stressed that it was highly unspeakable and regrettable that after nearly a decade of operations in Liberia partnering with FDA, the capacity building obligation that should benefit the LVD staff remains undefined, something he said needs to be quickly cross checked and possibly reversed to suit the aims and objective of the government's pro-poor agenda that is being presidentially trumpeted across the land".

These last two sources seem to reflect FDA's perception that the conditions are not yet in place for full and complete handover by October 2018, rather than a stepwise process is being envisaged.

This review will continue during the next audit, in particular through the VPA ANNEX II (Legality Assurance System of Liberia), Section 5 (Chain of Custody System).

This review might in future be merged with 'Chain of Custody System' (from 6.1.9) as part of a whole section on the COCS in Section 7.3 for archiving of related reviews.

7.3.4 Annex II - Introduction of, and conditions for licensing

The VPA Art. 3 provides for the licensing of timber products shipped to the Union that were legally produced or acquired as per the definition in Art. 2(j), in compliance with the provisions of this Annex II.

Under **Ann. II, 1d8**, FLEGT licensing by Liberia, for all timber exports, (will be) based on timber *produced in accordance with the Legality Definition* [i.e. through LV] and *duly controlled by the COCS.*

In accordance with **Ann. II, 1d11, 1d12**, the outlines of licensing [among others] will be *further developed and put into practice* during implementation of the VPA [Work In Progress]. This Annex [only] describes how, *in principle*, the LAS will work *in practice.*

This review of the relevant VPA Articles and Annexes will continue in due course, when LAS implementation gets closer to becoming operational. This section might in future be merged with 'Annex II - Licensing' (7.3.14) as part of a whole section to be created on 'Licensing' under 7.4 (Implementation of VPA requirements).

7.3.5 Annex II - Definition and coverage of the LAS' scope

7.3.5.1 Relevant references in the VPA

Same as above

The following references (of VPA Articles / Annexes) are used in the next section:

- Ann. II, 1a
- Ann. II, 2.1

7.3.5.2 Discussion

Same as above

[TBC] = To Be Continued or Confirmed

According to **Ann. II, 1a**, the LAS aims to ensure the legality of:

- The allocation of forest use rights;

- As per **Ann. II, 2.1a**, all domestically grown timber … controlled by the LAS must originate from legal sources i.e. legally designated areas for which use rights have been allocated in accordance with the legal provisions.
- Analysis shows that the allocation of use rights in accordance with legal provisions is reflected in the provisions in the VPA on 'Timber sources' (See A2R/below in 7.3.5.3).

- Harvesting [TBC];
- Transport [TBC];
- Processing [TBC], and
- Selling of timber [TBC] – Partly relates to 'Timber markets' (See A2R/below in 7.3.5.4).

This part of the review of the Definition and coverage of the LAS' scope is continuing with the exploration of the VPA Annex II, and of the LM in particular.

7.3.5.3 Timber sources

This review was considered completed in the Audit 2 report (6.1.6.3); it was therefore moved from 6.1.6 in this report hereto for archiving.

Phasing in timber sources, taking into account the LAS implementation phases (enforcement of new regulations), is a requirement for the independent audits as per the IA ToR (4.2) – as recalled under 6.4.1.1 in Vol.1 - among the following:

- Forest management contracts (FMC);
- Timber sale contracts (TSC);
- Private use permits (PUP);
- Community Forest Management Agreements (CFMA);
- Timber from artisanal logging [chainsaw/pit sawing timber?];
- Timber from plantation;
- Timber from agricultural and mining concessions.

As provided in **Ann. II, 2.1b**, legal timber sources encompass both *natural forests* and *plantation forests* under one of the following types of permit granted by the FDA: FMC; TSC; PUP; FUP; chainsaw permit.

Ann. II, 2.1c states the above-mentioned types of permit are provided for in the Law, by the NFRL, CRL, Chainsaw Regulation and other related regulations.

The following paragraphs in Ann. II, 2.1 each refer to a particular type of permit:

- **Ann. II, 2.1d:** Community Rights Regulations and Chainsaw Regulation;
- **Ann. II, 2.1e:** Rubberwood and other timber products harvested under agricultural concession agreements;
- **Ann. II, 2.1f**: Abandoned timber;
- **Ann. II, 2.1g**: Confiscated timber;
- **Ann. II, 2.1h:** Imported timber products.

Status of the development of all these (and possibly more) new regulations is discussed under 6.4.1.1 in this report:

- Status of each of these regulations (completed? approved? vetted? passed by Legislature? published?), as per the steps for a regulation to become enforceable that are discussed in 7.3.5.8 below; and
- Where each type of permit is provided for in the Law.

Status of the application to the LAS (and thereby, of their addition to the IA's scope) of these new regulations that have come into force, through developing related verification procedures and updating the Legality matrix (as per Ann. II, A1.2), is discussed under 6.1.13 in this report:

- Whether some of these regulations, or other types of permit (for which the regs were developed and are in force) are currently missing in the LD/LM (and must therefore be added to it, as per the analysis of the need for its revision in 6.4.3 in this Vol.2 – taking into account any past addition to the LAS / any amendment to the LM – incl. as per Ann. II, 2.3c).

7.3.5.4 Timber markets

This review is still on-going in the Volume 1 of this Audit report (6.1.6.4).

7.3.6 Annex II - Legal and regulatory framework relative to LAS implementation

Useful references:

- In this Audit 4 report: 6.1.1 and 6.4.1 in both Vol.1/2 from where these sections were moved to here for archiving;
- In the Audit 3 report: 6.1.1 and 6.4.1 from where these sections were moved to here for archiving;
- In the Audit 2 report: 6.1.1, under 6 'Audit evidence and findings', 6.1 'Baseline review of VPA requirements and state of implementation';
- In the Audit 1 report: 6.1.1.1, derived from the corresponding audit findings in 5.1.1.1.

7.3.6.1 List of relevant references in the VPA

The following VPA Articles / Annexes, related to this analysis, are referred to in the next sections:

- Art. 1, Objective
- Art. 2; 2,j
- Art. 8
- Ann. II, 1a
- Ann. II, 1b1
- Ann. II, 1c
- Ann. II, 1d1; 1d2
- Ann. II, 4.1 (Legality Definition and related Verification Procedures)
- Ann. II, Appendix A, Section 1
- Ann. II, Appendix A, Section 2 (Legality matrix)

7.3.6.2 Introduction

The VPA aims "To provide a legal framework aimed at ensuring that… all imports into the Union from Liberia have been legally produced" (Art. 1, Objective). For this purpose, relevant Liberia laws have been transposed into the Legality Assurance System (LAS) of the VPA.

Assessment by the IA, whether Liberia has "established a system to verify that timber has been produced or acquired legally" (VPA Art. 8) on the basis of the definition of "legally produced timber" (VPA Art. 2), indeed starts with an initial identification of the applicable, legal (i.e. legislative and regulatory) framework in place for the VPA.

IA's effort to "Understand the context" has not stopped with the Inception phase but in fact continues through the Baseline review. And a number of contextual elements are compiled in an internal working version of the Inception report that has been updated with inputs from the IA Legal expert.

An early "impression", that went gradually building up into a main "finding" during the first audits, is that Liberia has a very comprehensive corpus of documentation that is available for anyone concerned (in the public and private sectors) to know how to best contribute to effective legal compliance and implementation of the LAS.

According to the IA Legal expert, the broad legal framework in place is good, except for some issues (identified in the Inception report, 3.8) and some regulations still missing therefore not yet transposed into the LAS described in VPA Annex II to verify the legality of timber: this, in the IA's understanding, is the case for CFMAs (Community Rights Regulations) and Confiscated Timber. It links to the ISSUE ref. HII 2 (Legality matrix needs to be updated and reviewed) in the IA Progress DB, but for future attention the IA shall consider registering a new, specific issue about this.

The further assessment whether the resulting LAS is effectively established as described in Annex II (i.e. adequately designed and implemented for its purpose, with elements in place and operating as envisaged), and whether it enables the efficient verification of legality of timber, is then the **on-going mandate of the IA**.

7.3.6.3 Legal framework vs. institutional & governance frameworks

This review was followed-up on in the Volume 1 of this Audit 4 report.

7.3.6.4 Overview, as per the VPA preamble

The VPA (2011) acknowledges a number of the very progressive provisions of the National Forest Reforms Law (NFRL, 2006), especially (i) the balancing of the competing **commercial, community and conservation** priorities in use (the so-called "three Cs") in the management of forest resources; (ii) ensuring the legality of all timber products; and (iii) the protected right of participation of civil society, the private sector and the resident local population in forest governance through consultation and public information.

Regarding balancing the "3 Cs", the FDA is actively working, and has departments functioning on the corresponding commercial forestry, community forestry and protected areas. The commercial forestry activities appear to be more visible. However the community forestry program recently took off, thanks much in part to donor supports led by the US' forest governance program for community forestry, which supported communities to formalize through a nine-step process[46] and by other processes. To date, a number of community forest management agreements (CFMAs) have been signed between the FDA and a number of formalized communities now have the right to enter into commercial use agreements (CUAs) with capable private firms and/or to sign conservation contracts.

Progress is also being made to increase the number of designated protected areas, and to improve the involvement of communities in the management of parks and other protected areas.

[46] The "Nine Steps" Handbook (See 6.4.1.2)

7.3.6.5 The VPA Legality Definition: an exhaustive representation, or a sub-set of Liberian law?

Is the definition of "legally produced timber" in the VPA an exhaustive representation of all applicable laws and regulations in Liberia? Or is it rather a *sub-set* of the Liberian law?

- Exhaustiveness is what the VPA (in **Art.2,j**) initially suggests, which requires compliance with "*all statutory and regulatory provisions in force in Liberia*, as set out in Annex II". **Ann. II, 1b1**, as well: The LAS is "based on the national legislation in force…".
- **Annex II, 1a:** The LAS "aims to ensure the legality of: the allocation of forest use rights, harvesting, transport, processing, and selling of timber". Whether all these processes in the timber production chain are in fact covered in the VPA Annex II is being confirmed through the IA's on-going exploration of the Annex.
- However **(Ann. II, 1c)** "The stakeholders have agreed, through a process of consultations and discussions, the [five] elements of the LAS": **Legality definition** [LD]*, Verification of compliance with the LD, Chain of custody system, FLEGT licensing, and Independent audit; and **Ann. II, 1d2** further states "The LD was finalized and endorsed by national stakeholders during the VPA negotiations". Both articles suggest possible restrictions to the scope of legality, from Art. 2,j and Ann. II, 1b (above), due to stakeholders' intervention.
  *** Relevant note:** the LD is therefore one of the five key elements of the LAS.
- **Ann. II, 1d1** in fact states that the LD "sets out the *core* requirements of legislation applicable to the forest sector". This clearly confirms the above-mentioned restriction.
- **Ann. II, 4.1** (Legality Definition and related Verification Procedures): "The legality definition consists of 11 principles, each of which is divided into a number of indicators representing the legal requirement that must be complied with. Each indicator is equipped with verifiers that are used for determining whether a private-sector operator or government agency complies with the legal requirements covered by the indicator concerned". Also: "**Appendix A** contains the legality definition …" in its **Section 2** (Legality matrix) as consisting of Principles, Indicators, Verifiers, and Verification Guidance). So, in the IA's view, there is no Definition of 'Legality' as such; *the LD is entirely defined by the Legality matrix it consists of*.
- Appendix A, **Section 1** (Plan for forestry policy and law reform), further explains that: "The legality definition … has been developed through a participatory process [during which] Liberian stakeholders identified a number of *ambiguities, gaps and inconsistencies in the existing laws, regulations and policies that underlie the legality definition*, which need to be addressed in order to achieve the good governance desired in the Liberian forestry sector. The Government of Liberia therefore plans to carry out legal and policy reforms in respect of the forestry sector in consultation with all relevant stakeholders. It is expected that such legal reforms would be completed by 2013, and that *the legality definition will be updated thereafter to reflect these amendments*. Areas that require policy and legal reforms include: [a list of (a) to (i) elements follows, which includes a number of missing regulations, among others]".

The above not only suggests that the stakeholder participatory process (i) has indeed resulted in a selection of core requirements (i.e. a sub-set) of legislation applicable to the forest sector, and so set out the critical laws that need to be followed, but also that, the process having identified a number of problems, for which the Government of Liberia had planned to carry out legal and policy reforms, (ii) defining "legally produced timber" in the VPA is in fact “work in progress” as these reforms are implemented.

According to the IA’s Legal expert, it is also clearly provided for, as stated, that the LD will (need to) be updated if (for example) any of the emerging law reforms and regulations are agreed in respect of chainsaw milling and other areas, with community use contracts involving any agreed departure from the current Code of forest harvesting practices (CFHP).

The ‘Urgent need to update and review the Legality matrix’ is analyzed in 6.4.3 as part of the ‘Follow-up on previously reported issues’ in 6.4.

7.3.6.6 Hierarchy of the legal and administrative texts

Some hierarchy is assumed among the legal and administrative texts governing any natural resource-based sector, i.e. between: national policy, national strategy, legislation, regulations, procedures, and other implementing activities and tools (like maybe zoning, mapping, resource inventories, the use of compliance verification checklists, etc.).

All legal texts and duly approved regulations, codes, guidelines are by essence binding on stakeholders.

A national policy usually serves to provide broad directions and over-riding principles, for forest management, conservation and use activities and laws, and to therefore preside over the development or revisions of the national legislation. In Liberia, it is the National Forest Reforms Law (NFRL, 2006) that actually mandated the development and implementation of a **National Forest Policy**. Section 4.3 of the NFRL requires that such policy be adopted and revised from time to time by the Board of Directors of the FDA to reflect sound principles of sustainable forestry.

To ensure that the Policy is duly implemented, the NFRL also requires the FDA to prepare and from time to time revise a **National Forest Management Strategy** reflecting the Policy, and that such Strategy “classify all forest lands in the Republic according to their legal status and potential use”. This means that in the Strategy, the FDA is among others required to identify “specific areas that the Authority finds suitable for commercial use under a Forest management Contract or Timber Sale Contract pursuant to Chapter 5 of this law.” The FDA is to offer the public “the opportunity to comment on a full draft of the Strategy and on any revision. The FMAC also has a consultative role to play in that process (See 7.3.1.10, Vol.1).

The VPA Annex II, in its Appendix A, in fact provides a list of ‘Legislation referenced in the Liberian legality definition’ that does include[47] both:

- Liberia Forest Policy (2007) and
- National Forest Management Strategy.

A 2007 ‘National Forest Management Strategy’ identified by the IA actually mentions the National Forest Policy of Liberia adopted in 2006 (p.4) which "The

[47] Additional Relevant Documents, p.57

FDA has developed..." (p.20), and the IA is also aware of a document titled '**Liberia Forestry Policy and Implementation Strategy**' actually dated 2006. While it is not fully clear which document preceded the other, the IA's Legal expert notes that the relationship is not necessarily one from policy to strategy and then only to law: in this case, law (NFRL) provisions may be implemented through policy followed by strategy and then specific regulations or guidelines.

7.3.6.7 Existing Liberian forestry legislation

As a whole, the Liberian legislation (laws and implementing regulations) relative to forestry can be listed as currently including[48]:

- The Act creating the Forestry Development Authority (FDA) (1976);
- Environmental Protection Agency Act (2002);
- Environment Protection and Management Law (EPML, 2002/2003);
- Protected Forest Areas Network Law (2003);
- Public Procurement and Concessions Act (2005);
- GOL, Executive Order - Forest sector reform (02.2006);
- National Forestry Reform Law (NFRL) (2006) and its implementing regulations;
- FDA Ten Core Regulations 101-07 to 110-07 (2007);
  - Including Reg. No. 108-07 on "Establishing a Chain of Custody System"
- Community Rights Law (CRL) (2009);
- LEITI Act (2009), An Act Establishing the Liberia Extractive Industries Transparency Initiative, 13 July 2009;
- LEITI Regulation 01 Nov 2009
- FDA Regulation 111-10;
- Freedom of Information Act (2010)[49];
- Revenue Code of Liberia, as Amended (2011);
- General Business Law (GBL);
- Liberia COCS Standard Operating Procedures (SOPs) (2016, revised in 2017 and 2018);
- Liberia Labor Law;
- National Social Security Law
- FDA Code of Forest Harvesting Practices (CFHP) (2007, amended 2017[50]);
- Land Rights Act (Aug. 2018);
- Local Government Act (Aug. 2018).

The 'Guidelines for Forest Management Planning in Liberia' (FDA, July 2009, FRM) have the status of a regulation; at least partly since a Regulation[51] is referring to it as containing regulatory requirements.

Note for future attention: The above list should include all references to the legislation that are used in the Legality matrix (for example, from Principle 1,

[48] Based on the VPA Appendix A of Annex II, plus other findings and updates

[49] Publication arrangements are outlined in Sections 2.1–2.3 of the FoIA 2010 to make required information available about and documents from government agencies that exercise oversight over the forestry sector (VPA, Ann. IX, 1.2 (a))

[50] CFHP amended in May 2017 with FDA Board approval; facilitated by VPASU. Draft Regulation/ Guidelines on strengthening the safety and welfare of workers in the timber industry: replaced by including provisions in the amended CFHP (VPASU update March 2018).

[51] FDA Regulation No. 105-07 'Regulation on Major Pre-Felling Operations under Forest Resources Licenses', Part Five: Forest Management Planning (FMC holders), Section 51. Preparation of a Forest Management Plan, (b) "In developing the plan required by this Part, the Holder shall ensure that the plan conforms to the requirements, including the requirements for public consultation, of the following: (1) The Forest Management Guidelines issued by the Authority".

Indicator 1.1 in the LM: GBL (4.3 to 4.5); COCS SOP (4)) and any update. Conversely, there is a need to assess whether all references in the LM are valid.

Relevant resource:
https://www.documents.clientearth.org/?s=Liberia&lang%5B%5D=en&swp_category=forests

7.3.6.8 What it takes for an implementing text to become a by-law regulation (binding on forest stakeholders)

The questions for the IA were:

- Whether implementing texts like SOPs (standard operating procedures) developed as part of implementation support projects (by e.g. SGS or VPASU) may become regulatory (acquire the status of a regulation, binding and enforceable).
- If that is the case, what is the required formal, official approval (by e.g. the FDA Board), communication (to all interested parties) and enforcement (by the responsible government or other bodies) process(es) to be followed for their adoption.

According to the IA Legal expert:

- For many reasons, none of such SOPs may take the status of a regulation unless a formal process is followed and compliance is compelled by a formal governmental authority acting within its competency.
- Under Liberian law, a regulation may not be issued by anyone - whether a government body or not - unless there is a legislative authority for exercise of such power. The FDA's authority to issue regulations is contained in Section 19.1 of the NFRL.
- Chapter 19.2 of the NFRL further mandates the FDA to consult before making any of its action a regulation, and this public participation requirement is detailed in one of the "Ten (10) core FDA Regulations". Hence, unless a public consultation is had, no proposal may be implemented or enforced as a regulation, a manual or a guideline binding on forest stakeholders.
- While technical processes or similar works have important value and are generally complied with, formal enforcement of such documents needs FDA's action. The procedure needs not always be formal. It is enough if the FDA issues a citation, provided such circular will have to comply with the regulation on public participation if the matter is one of those documents listed in the regulation as requiring public consultation.
- The word "FDA" includes the management and Board of the FDA. Hence, the regulations on public participation and Section 19.2 of the NFRL apply to both the Management of the FDA and the FDA Board of Directors.
- The regulation must be approved by the FDA Board of Directors, which is the highest decision-acting body of the FDA. There is then the normal requirement that the regulation or any rule be "published" in order to be known by the public and thereupon enforceable.

The following inquiry was therefore sent to SGS/LVD (14/04/2018):

"Following on from our investigations, we wish to confirm the validity of the following two documents:

- "Deliverable – Manual of Procedures for LVD staffs July, 2016" and also
- "Deliverable – Manual of Procedures for Forestry Operators July, 2016"

Our legal expert has advised as follows:
"SOPs may not take the status of a regulation unless a formal process is followed and compliance is compelled by a formal governmental authority acting within its competency. Chapter 19.2 of the NFRL mandates the FDA to consult before making any of its actions a regulation, and this public participation requirement is detailed in one of the ten (10) core FDA Regulations. Hence, unless a public consultation is had, no proposal may be implemented or enforced as a regulation, a manual or a guideline binding on forest stakeholders".
Please can you provide us with evidence that such consultation has occurred for the two sets of procedures quoted above and also evidence of approval of the above procedures by the FDA BOD.

Since then some evidence was found in retrospect on the LiberTrace website:
LVD STANDARD OPERATIONAL PROCEDURES (SOPS) ARE OFFICIAL
By Theodore Nna - 03/09/2017 04:51 PM
"As per the implementation of the Project aiming at "Establishing and Operating a Timber Legality Department (LVD) within Liberia's Forestry Development Authority (FDA) and Building Capacity within FDA", SOPs were prepared by SGS in consultation with the FDA.
After some internals tests conducted by LVD/SGS these SOPs were transmitted to FDA in August 2016, and ***the approbation by FDA was signed on October 20th, 2016****. ...".*

The IA is now aware that further updated SOPS have been uploaded to the LiberTrace Library:

- *SOPS FOR LVD ARE UPDATED*
  By Theodore Nna - 06/05/2018 06:50 PM
  (...)

and then again:

- *07/15/2018 02:58 PM*
  SOPS FOR LVD UPDATED
  The previous version of SOP for LVD was published in October 2016. Later on, LiberTrace Go Live was launched (in April 2017). One year later, it has b...
  Read More... (...)

- Current online version of 'Manual of Procedures for LVD staffs': Version 2.2, released 07.17.2018, as "**Updated after Independent Auditor comments**".

- "…only the online version of this document is official (available in LiberTrace Library). Therefore, all printed versions of this document are uncontrolled copies". (Introduction to the Manual, May 2018)

The reminder sent to SGS (July 19, 2018) therefore included:
What evidence can you therefore provide:
-> that the initial SOPs were approved by FDA on October 20th, 2016 as stated;
-> whether such approval involved public consultation and formal approval by the FDA BOD; and
-> whether the same process is followed each time these SOPs, which are meant to be binding on forestry stakeholders, get updated?

A discussion followed:

- The same day the SGS LAS Team leader provided and the IA acknowledged:
  - The letter of approval of the SOPS by the MD of the FDA (Oct. 20, 2016);

- Evidence of stakeholder consultations (two-day workshop held on November 30th and December 1st, 2017 "to capture the comments on the revised SOPs", and again on May 11th, 2018 (a small workshop to get feedback, after one full year of use of LiberTrace and the SOPs developed for it)) and training in the use of LiberTrace based on the SOPs (27-29 June 2018 to "trail the COC from registration to the issuance of Export Permit").

- The IA also found the following information:
  - Version 2.0 of the Manual dated 21.09.2017 was due not only to be sent "for comment to all stakeholders" and for "a workshop (to) be organized in order to capture the comment" "before issuance of an updated version", but also "*before FDA approval*"; and
  - The invitation to the 2017 workshop also included a "Note that, after that workshop, all the comments will be captured and the *revised Manuals submitted to the MD of FDA for approval*".

- For the IA, these two statements clearly indicated that FDA approval of the revised Manuals after the 2017 workshop and consultation was considered to be necessary. In this regard, the explanations provided by SGS did not provide evidence that such approval of the 2017 version ever took place as stated above (and as new updates of the procedures should probably be officially approved as well).

- As to the legal nature of the SOPS,
  - Whether they are only "working tools", as per the FDA letter, and
  - "Intended to give practical guidance" but still containing "binding instructions" as per the Introduction to the October 2017 version (p. 5 or 6);
  - And whether "They are not taking the place of the regulation, they are just describing how the Regulation must be implemented" in SGS' view;
  - Or if they are supposed to "take the status of a regulation" in order "to be implemented or enforced as a regulation, a manual or a guideline binding on forest stakeholders" and as such must go through a formal process of public participation (which did take place) "before making any of its actions a regulation" and FDA approval by the Chairperson of the Board of Directors, as per the IA's current understanding;
  - The IA said it would rely on the opinion of the Legal expert in the IA team. By this the IA wanted to clearly understand (i) whether or not the SOPs are supposed to take the status of a regulation, being binding, and (ii) if the appropriate process is being followed to ensure that the SOPs are constantly validated as such.

- The next day the SGS LAS Team leader reaffirmed the views that:
  - The updated version is not a new version of SOPs, but the announced continuation of an approved one, and that, because the updated version was announced in the approved version (10.20.2016), by approving the previous version and based on the statement (approved) in the last paragraph of the introduction, the updated version prepared along with all the stakeholders (FDA as well [Commercial and Law Enforcement]) should just be published, and the location of the official version communicated to all the stakeholders (i.e. the LiberTrace Document Library); and that

- No, the SOPs are not supposed to take the status of a regulation, being binding; they are the description of how the Regulations and laws are practically implemented and don't replace them;
- In terms of whether the appropriate process is being followed to ensure that the SOPs are constantly validated as such, we are not talking about a NEW VERSION of SOP, but about an announced and approved updated version prepared along with all the stakeholders. The updated version is the result of field experience of the implementation of the approved one (according to the last paragraph of the introduction of the October 20th version).

- The IA acknowledged (same day) the further explanations and views provided on this issue and said it will now, as envisaged, seek the opinion of its Legal expert for confirmation or clarification regarding the legal nature of the SOPS.
- This was obtained on 30 August 2018 in the following terms:
  - While an SOP within an institution is generally an outline of how a task is performed, when the SOP is required of others then it needs due authorization to ensure that these third parties comply;
  - Under Liberian laws, the FDA is required to approved codes, guidelines and other instructions affecting all stakeholders in the forest sector. The SOPs cannot therefore be adopted by any one consultant and then required of private operators and other persons;
  - In fact FDA Regulations 101-07 require public participation in not only the adoption but also the amendment of regulations and codes and manuals, which arguably includes SOPs. Manuals are very similar to SOPs, but they are all required to be signed by the FDA;
  - It is the reasons that FDA signs SOPs and/or is required to sign them because its assent gives it the binding effect.

The IA made an **ISSUE** of this process of Approval of LVD procedures, referenced **HII 11** in the IA Progress DB:

ISSUE HII 11
Impact level: High
Identified ISSUE: No evidence received of revised LVD COC Procedures formally approved as legally binding on forest stakeholders.
Recommendation: Public consultation and FDA BOD approval of any updated version.

FDA/IAWG response to the Main R&Cs in the Audit 3 report:

The original 2016 SOP was approved by the Board of Directors. Prior to the audit, the LVD procedures approval was in process. However, it has since been approved by the Managing Director of the FDA and Board Approval is pending.

Mitigation Measure:

Responsible Department: LVD

Time Frame: Updated April 2019

Reference: P3-LVD-05

Remarks: Board approval to be completed by end of 8/2019 and will be uploaded to the FDA Website

IA review of FDA/IAWG response:

- 27.09.19: nothing found on FDA Website
- Copy of Board Approval to be provided
- HII 11 remains open.

Update during Audit 4:

The Technical Manager of the CFD confirmed SOPs were not approved at the last board meeting. The 2016 version is thus the valid procedures that should be followed. Conclusion: New SOPs not yet signed off and thus not yet valid. Issue thus remains open.

The 'Compliance Procedures for Legality Matrix Verifiers' developed by VPASU[52], which is meant to complement the LVD Manual of Procedures [and therefore also take the value of regulations], might be subjected to the same formal approval process. The IA would therefore expect the VPASU SOPs to also have to go through FDA Board approval following public consultation, further to the DFID and JIC approval which would be more an internal, technical approval stage and might also follow from the public consultation). This will have to be assessed after the review by SGS/LVD and DFID.

Conclusions

The VPA aims "To provide a legal framework aimed at ensuring that… all imports into the Union from Liberia have been legally produced" (Art. 1, Objective). For this purpose, relevant Liberia laws have been transposed into the Legality Assurance System (LAS) of the VPA and its Legality definition.

Liberia has a fairly comprehensive corpus of forest legislation (policies, laws and regulations) in place. A lot of efforts have been placed to support practical implementation of the LAS in both public and private sectors by developing a range of procedures, guidelines, guidance and checklists. This is generally considered to provide good foundations for effective legal compliance and enforcement in the Liberian forest and timber sectors. 'Existing Liberian forestry legislation' is listed in 6.1.1.7. The necessary institutional arrangements are also being developed, strengthened or maintained.

The legal framework keeps further improving, especially with regards to community forestry. A number of formalized communities now have the right to enter into community forest management agreements (CFMAs) with the FDA, commercial use agreements (CUAs) with capable private firms and/or conservation contracts. Progress is also being made to increase the number of designated protected areas, with greater involvement of communities in the management.

Issues of remaining imperfections in Liberia's laws and regulations however still exist, and legal and policy reforms to address these are still ongoing. Some regulations are still missing.

The Legality Definition that was retained in the VPA (back in 2011) is entirely defined by the Legality matrix it consists of, composed of Principles, Indicators, Verifiers, and Verification Guidance.

The Legality Definition, however, is a sub-set of Liberian law endorsed by the stakeholders in 2011 (it sets out the *core* requirements of legislation applicable to

[52] Final draft release 26 March 2018, subject to review by SGS/LVD and DFID and to JIC approval

the forest sector), rather than an exhaustive representation of all applicable laws and regulations in Liberia, and there are provisions in the VPA to update it.

The IA is actively monitoring the development and enforcement of new regulations, with particular attention for the implications on the division of scope for the IA taking into account "the phasing in new timber sources" as per the IA ToR (4.2, Sequencing of Audits and operationalization of FLEGT licensing scheme).

Amendments and new requirements from new regulations enforced after 2011 that are not yet transposed into the Legality matrix indeed call for an urgent need to update the Legality matrix'.

To this effect, the JIC as a body may lawfully amend all annexes of the VPA.

Because of this, and other reasons an 'urgent need to update *and review* the Legality matrix' along with its underlying regulations and institutional arrangements is analyzed in 6.4.1 as part of the 'Follow-up on previously reported issues' in 6.4.

In view of the fact that Liberia was expected to have finalized necessary law reforms by 2013, and *the legality definition [to] be updated thereafter to reflect these amendments* and support the VPA implementation process[53], the IA registered a new ISSUE (ref. HII 13 in the IA Progress DB) about the **slow development of new regulations** hampering their application to the LAS (See 6.4.1.1).

The IA registered another ISSUE (ref. HII 11 in the IA Progress DB) about the **lack of evidence of revised LVD Procedures being formally approved** as legally binding on forest stakeholders on the basis of public consultation and FDA BOD approval of any updated version (See 6.1.1.10).

Recommendations:

Maintain efforts to finalize the necessary law reforms as early as possible to support the VPA implementation process (as per ref. HII13 in the IA Progress DB provided in 7.2, about the slow development of new regulations hampering their application to the LAS).

Meanwhile, address the other related risks & issues raised by the IA, including (as referenced in the IA Progress DB):

- No minimum diameters currently in force in Liberia (ref. MR 1);
- The risks created by the enactment of the 'Forest Industrial Development & Employment Regime Act' in October 2017 (ref. HR 1);
- The lack of evidence of an adequate process being followed for the official approval of revised LVD CoC Procedures as binding on operators (ref. HII 11);
- Loopholes in the coverage of the LAS implementation process by the different external support service providers (ref. HII 14).

Further IA action (on-going):

- Ensure that (i) the listing of 'Existing Liberian forestry legislation' is complete, in chronological order, (ii) the list in particular covers all the references to the legislation that are used in the LM (above), (iii) all these documents are identified in the IA Database and (iv) the IA has an electronic copy of each and every one;

[53] VPA Annex II, Appendix A, Section 1, Plan for forestry policy and law reform

- Continue actively developing the inventory of all implementing regulations along with a regular update of their official adoption and enforcement (above);
- Keep collecting information about current issues in the applicable legal framework and their (possible / effective) resolution.

7.3.6.9 Minimum cutting diameters

This review was previously considered complete and was moved from 6.4.2 hereto.

Useful references:

- In the previous Audit 3 report: 6.4.2, 7.3.5.9;
- In the Audit 2 report: 6.4.10;
- In the Audit 1 report: 2.1.7 (in 2.1 Main conclusions and recommendations, derived from 6.2.2, themselves derived from the audit findings in 5.2.2).

From A1R 5.2.2; Other findings, conclusions and recommendations related to the legal framework:

During workshops for the revision of the CFHP, it had been agreed that the minimum cutting diameters in the old version of the CFHP[54] (which prescribed variable cutting diameters depending on species, with no species less than 60cm) would be adopted as a separate document; otherwise if any one of the diameters was to change - increase or decrease -, the whole CFHP would be outdated. However, after completion of the new CFHP, the FDA never sent out an instruction to maintain the old minimum cutting diameters. This implies that there is no specification on minimum cutting diameters available in Liberia at the moment, leading to a high risk that this void is abused to reduce cutting diameters on an *ad-hoc* basis. Coupled with the administrative rotation (number of years between two harvests in the same forest block – currently only 25 years in Liberia), minimum cutting diameters are an important factor to ensure a biologically and economically sustainable yield in the long term in all timber species.

Recommendation (in A1R, now outdated): *"*Adopt the minimum cutting diameters regulation from the old version of the CFHP as a separate document. This regulation should continue to prevail on whatever derogation in the Contracts".

Follow-up: The above recommendation needed to be reviewed on the basis of new findings and analysis.

Forward planner (Summary 04/12/2017): Resolution of the dbh issue to be decided (outstanding from 1st Technical JIC). Current Status of Activities: CFHP as revised does not specifically address the minimum diameter cut. Dbh was included in the former code but not in the revised one.

JIC 2nd technical Meeting (04/12/2017): joint FDA / VPASU presentation on a 'Resolution of the minimum diameter cut issue to be decided: transfer annexes from the former CHFP' (ref. LM P4). Status: TBC.

Updates from the Audit 2 (field audit at SGS/LVD):

- The February 18th's FDA Board meeting included a resolution on the Cutting diameters to *go back to the old list*. A manager in the FDA Commercial Dept. was charged by the new MD to write the minutes but this was still outstanding.

[54] 2007.09 Code of Forest Practices - September 10, 2007, XIV APPENDIX, Table: DBH [Diameter at Breast Height] Cutting Limits, per Species (Trade Name), Minimum Diameter Limit (cm).

- Back to 27 April 2017, the former MD of the FDA sent an untitled letter in which the cutting diameters are actually reduced to a single limit of 60cm (See **Annex 8.18** to this report, FDA minimum diameter letter). This single cutting diameter of 60 cm is also being wrongly applied in LiberTrace across the board, including for export permits issued for *all trees* of species that however had a minimum cutting diameter in the old Code of 60cm or larger – including Ekke. Although an undertaking was given by the current MD to rectify the situation, no such steps had been taken at the time of completing the field visit of Audit 2.

Further analysis (in consultation with the IA Legal expert):

The IA's initial expectation regarding the third paragraph of the above-mentioned FDA letter (whereby FMC agreements take pre-eminence over other regulations and codes because they were ratified by the Legislature and signed by the President) was that nothing should prevail on existing Law (as represented by the clause in the old CFHP). Interpretation among the IA team was in fact that the MD had been wrongly applying the general 60cm rule to all species whereas some species should have a higher minimum cutting diameter, as in the old CFHP.

A former FDA letter (17 October 2016) that also relates to the Cutting diameters issue was brought to the IA's knowledge; it refers to "the required diameter cut limit of 60cm and above for timber harvested in community forests" that should be applied.

The IA Legal expert advised as follows:

1. Forest management Contracts (FMCs) are indeed required to be ratified and, upon ratification, assume the character of a special legislation/statute of equal rank as the NFRL. This is not the same with TSCs [and CFMAs below 50,000 hectares[55]] that are not subject to full ratification. FMCs are not superior to the law, but they do have the status of law. An otherwise valid FMC is therefore superior to any [posterior] FDA Regulation, guideline or a code of harvesting practice. No [posterior] FDA regulation can amend or annul an [existing] forest contract ratified by the lawmakers.
2. The MD's letter is therefore consistent with law. It means that FMCs, as special laws in themselves, are supreme when compared to a code or guideline.
3. The question then is whether there was a provision in each FMC relative to the cutting diameter. If there was a provision that was specific, then there is an issue. (…) a grant of specific right (…) will prohibit the FDA from further regulation of the Sector. In other words, if an FMC has a specific provision that grants the contract holder a right to harvest at a specified diameter, then the FDA cannot by regulations change that since an FDA regulation is of inferior rank as compared to a forest contract that is ratified by the legislature and is therefore a law. If an FMC did not contain any provision specifying or regulating matters of diameters (…), the FDA can lawfully proceed to regulate on such matter and any regulation issued by the FDA will be binding on all contract holders including those currently holding forest contracts.
4. It therefore seems that while the MD's letter was right in terms of general principles of law, the FDA may want to consider issuing a new regulation of general application (or indeed transfer annexes from the former CHFP into a

[55] CFMAs above 50,000 hectares are also subject to legislative ratification and presidential approval.

further amended CFHP) that will meet the requirements of stakeholders' consultation. Where such new regulation is not directly contrary to an FMC, it would prevail. However, if there is a provision in the forest contract that says something that the FDA wants to change now, then the proper way to do that is generally to amend the forest contract; such amendment will require legislative ratification. Some of the FMCs do not have such provision regarding the cutting diameter to be observed. (…) assumption is that there is no such specific provision relating to cutting diameter, and that this should therefore be no issue or problem for the FDA to issue regulations reflecting stakeholders consensus. The FDA can still proceed to issue regulations for new FMCs to be contracted or those existing FMCs that do not have such provisions. The FDA could also engage the existing forest contract holders having such provision to agree with what is now a stakeholders' consensus.

According to the IA's forest auditing expert, though, each FMC does refer to the minimum cutting diameter.

There was also a question whether the new CFHP formally annulled and replaced the former one, including regarding the minimum cutting diameters, implying the latter is no longer a regulation in force if it was neither transferred into the new code nor to any new regulation:

- The IA Legal expert answered as follows: Regarding the CFHP, a newly adopted one replaces the previous one, and there is generally going to be a language to that effect (…). If the new one discusses cutting requirements or minimum diameter or does not expressly say that its new provisions supersede the previous provision, the general interpretation is that it nonetheless impliedly replaces the previous one. This is because you cannot have two effective CFHPs in the same jurisdiction.
- It was then confirmed that the CFHP was amended and the amendment approved by the Board of the FDA on May 31, 2017 in its second edition. According to the IA Legal expert, no specific language on the diameter requirements was found in it. However, the Code reaffirms the harvesting requirements contained in the relevant forest management contracts. It is fair to say that the original code has been completely replaced by this new, 2017 Revised Code. It also means that, to the extent that the May 2017 Code does not specify a minimal diameter requirement, the provisions in the existing contracts (FMCs, etc.) will apply.
- A key section of the Code however states as follows, in '4 HARVEST CONTROL, MONITORING, INSPECTION AND ASSESSMENT':

  "Harvesting assessment is a systematic check to determine or verify that harvesting operations followed the annual harvest plan and achieved its technical, financial and environmental objectives while complying with established standards of **management plan guidelines** [SPEQS]. Monitoring and assessment are thus key elements of responsible forest management for the forest operator to conduct."

In this context, it seems fair to say that the Guidelines for Forest Management Planning (2009) should guide what is written in the contracts. They in fact define the DBH Cutting limit (DCL) as being the "Minimum diameter at breast height, defined for each species, above which a tree can be harvested". Plus they clearly

stipulate in its appendices (Appendix 5: Methodology for DHP Cutting Limit definition) how the Administrative DCL may need to be adjusted: depending on some factors[56], the process may lead to keeping, decreasing, or increasing the DCL of some species.

Section 7.4 Management procedures for the Timber Production Unit further provides 'Management parameters', "in compliance with Liberian regulations, the Code of Forest Harvesting Practices", including for the 'DBH cutting limit':

- "Version 1 of the SFMP (Strategic Forest Management Plan): refer to the Code of Forest Harvesting Practices about the existing DBH cutting limit;
- Final version of the SFMP: these DBH Cutting Limits should be updated by the FDA during the preparation of the SFMP. See Appendix 5 for the rules regarding the DBH cutting limit definition. This update will be decided by the FDA after a consultation process."

But the 2009 Guidelines referred to the old CFHP (2007), and the revised CFHP (2017), as mentioned, no longer provides DCLs. The current void therefore precludes the methodology of being applied to adjust DCLs, which only adds to the issue.

Conclusions (as updated during Audit 2):

The revised CFHP (May 2017) does not regulate minimum cutting diameters anymore as in the previous version of 2007 (which prescribed variable cutting diameters depending on species, but with no species less than 60 cm, to ensure a long term sustainable yield in all timber species). It had been agreed that an instruction would be adopted as a separate document (so as to avoid outdating the whole CFHP if any one of the diameters were to be changed). This void leads to a risk that cutting diameters are reduced on an *ad-hoc* basis.

Since then (if not also before May 2017), the requirement tends to be addressed as part of each new individual forest contract, and the FDA in several known occasions applied the general 60cm rule to *all* species (instead of an absolute minimum whereas some species should have a higher minimum cutting diameter, as in the old CFHP). It could be hastily considered, but that would be wrong, that these FMCs and other agreements are not violating the provision in the old Code, since the latter is no longer in force.

There are doubts whether the Guidelines for Forest Management Planning (2009) were used to guide what is written in the contracts, but they should have been used or not been contradicted, since they still definitely apply as a forestry operation by FDA whatever is written in the contracts (the Code, in Section 4, provides for the need to comply with them): these Guidelines define the DBH Cutting limit (DCL) and refer to the CFHP about existing DCLs; they further provide a clear scientific methodology to be applied by the FDA during the preparation of the SFMP (Strategic Forest Management Plan) for adjusting administrative DCLs, a consultation process that may lead to keeping, decreasing, or increasing the DCL of some species.

The FDA may now want to consider issuing a new regulation of general application that will meet what has become a stakeholders' consensus (or amending the

[56] "Species group reconstitution Rate (%Rpop) calculation for each class of species for a period rotation of 25 years", and the "reconstitution indexes of the initial number of harvestable stems" (%Re)

Code). However, no FDA regulation could lawfully amend or annul a forest contract, since FMC agreements take pre-eminence over any FDA regulation, guideline or a code (because they have the status of law and are ratified by the lawmakers). In this regard, efforts to just "go back to the old list" and "transfer annexes from the former CHFP", as mentioned above, will not suffice in all cases:

- If an existing FMC does not contain any related provision (which does not seem to be the case, as – for future attention - each FMC is assumed to refer to the minimum cutting diameter), the FDA can proceed to regulate on such matter and any new regulation issued by the FDA that is not directly contrary to an FMC will prevail and be binding on all holders of contracts that did not contain any such provision;
- Otherwise, the FDA could engage the forest contract holders having such provision to agree to amend the forest contract accordingly; such amendment will require legislative ratification;
- The FDA can still proceed to issue regulations for new FMCs to be contracted or those existing FMCs that do not have such provisions.

This (that no posterior FDA regulation could amend or annul an existing forest contract if it contradicts the latter) is not the same with TSCs and/or CFMAs (below 50,000 hectares) that are not subject to full ratification.

This analysis initiated in the Audit 1 report (2.1.7, 6.2.2) had led to (i) the recording of a **RISK** (ref. **MR 1**) in the IA Progress Database, changed as a result of Audit 2 as follows:

RISK MR 1
Impact level: Medium
Identified RISK factor: No minimum diameters currently in force in Liberia
Identified RISK description: Cutting diameters reduced on an ad-hoc basis, and 2009 Guidelines not applied, undermining SFM
Recommendation: Issue a new regulation on minimum cutting diameters; amend affected contracts.

In view of the supplementary analysis provided, and of the FDA letters (17 October 2016, whereby "the required diameter cut limit of 60cm and above for timber harvested in community forests" should be applied; and 27 April 2017, in which the cutting diameters are reduced to a single limit of 60cm), and that this single limit of 60 cm is also being applied in LiberTrace across the board, including for export permits issued for species that have a minimum cutting diameter in the old Code of 60cm or above, the Risk (ref. MR 1) had been re-qualified as a high-impact **ISSUE** (ref. **HII 33**) in the IA Progress Database:

ISSUE HII 33
Impact level: High
Identified ISSUE: Perception that no minimum diameters are currently in force in Liberia, and so no minimum diameters currently enforced, despite the revised CFHP providing for compliance with the Management Guidelines (2009) that define how to keep or adjust the DBH Cutting limit (DCLs) in the 2007 CFHP. Cutting diameters are being reduced, and the 2009 Guidelines not applied, undermining SFM.

Recommendation: Hold to the minimum cutting diameters from the "old" CFHP (2007) as referred to in the Forest Management Planning Guidelines (2009); re-issue a regulation on minimum cutting diameters; amend any affected FMC contracts.

The review continued in the Volume 1 of this Audit 4 report.

7.3.6.10 Land Rights Act and Local Government Act

This review was previously considered completed and was moved from 6.1.1.9 hereto.

A new development in this area was the signature of the **Land Rights Act** on September 19, 2018. It was considered to be a "game changer" in terms of forest governance. Most significantly it recognizes customary land; it will facilitate proof of customary ownership of land and includes important provisions on e.g. Free Prior and Informed Consent.

Major legislation was also passed by the Liberian Government, called the '**Local Government Act**', which grants to *local government* substantial authority and control over many activities that were being handled from Monrovia by central agencies and ministries. The Local Government Act is also regarded as a transformative legislation, which was signed into law by the President of Liberia on the same day that the land Rights Act and at the same time and during the same occasion.

The **Land Rights Act** details the various categories of land recognized and protected in Liberia, and the conditions, rights and responsibilities attendant to ownership use, and other acts affecting or relating to each category of land.

The Act now recognizes four categories of land ownership: (i) Public Land, (ii) Customary Land, (iii), Government Land and (iv) Private Land. It also addresses Protected Land, which it identifies as common to all categories of land rights.

Most significant is its express recognition of customary or community land on the basis of many years of association, connection and/or use of the land by members of the community. It details its features and how it can be acquired, leased and managed.

Any land, if not owned by a private person and also not a site of any public activity, building or project, *is now presumed to be customary land*, no longer Government land by default. This is a reversal from what used to be before the Land Rights Act where all land was presumed held by the Government unless a Public Land Sale deed was shown to evidence transfer of the land by the government.

Non-Liberian natural persons and business entities partly owned by a foreigner are not allowed to own land. Government may still sell or lease portion or all of a parcel of Government-owned land to a private person.

The key provisions of the Act relating to customary land are as follows:

1) Customary land is owned and managed or to be managed by all the community members acting collectively through specified organs;
2) No part of Customary land shall be sold to non-residents of the community, until after fifty (50) years as of the passage of the Act;
3) Existing agriculture, forestry or mining concessions located on newly recognized customary land will remain valid;

4) During any scheduled periodic review of a concession located on a customary land, the community has some rights to present inputs and concerns to any extension or reviewing of an existing concession, through the Community Land Development and Management Committee (CLDMC), to ensure that its rights and interest are safeguarded and protected";
5) The subsoil still belongs to the Government, which therefore has the right to decide to whom to it may grant concession to mine; and
6) The community (through its authorized body) may lease customary land to a concessionaire (for a period not exceeding fifty years and on equitable terms to include adequate rent to be paid timely).

From the above, and from a meeting and further email discussion with the IA Legal expert the following points were noted and clarified:

- *Existing forest concessions* located on newly recognized customary land will remain valid (laws cannot be retroactive, hence the new law cannot invalidate an existing by-law right such as a concession);
- No more new concessions (FMCs, TSCs) will likely be allocated on Government land. FMCs and TSCs may still be granted over Government land[57]. But there will be less Government land since land is now "by default" (presumed to be) customary land. So there is likely not to be any more Government land that would have timber;
- No more new FMCs or TSCs will be allocated on customary land.
  FMCs and TSCs are not allowed on private or community/customary land, unlike for the subsoil that still belongs to the Government, which therefore has the right to decide to whom to it may grant concession to mine. Only PUP may be awarded on Private land (See PUPs' legal status, in 6.4.1.1, Vol.1); and only CFMA can be awarded over community forest/customary forested land;
- The community may lease* customary land to a concessionaire (for a period not exceeding 50 years), but *not for logging*.
  *A lease is not necessarily a forest contract; it may be to anyone to build a factory, or plan crops or do any other lawful thing. A community may lease a portion of its customary land to anyone (including a logging operator) and the lease can be for no more than fifty years. However logging in a community forest can*not* be conducted through long-term lease (concession) of the land (and of the forest resource that grows on it) to a logging operator. A community may therefore lease its customary land for purposes *other than logging*.
  The Land Rights Act is not a forest law, but a broader land tenure legislation that therefore deals with many questions such as sale of land, lease of land, etc. These are not necessarily for harvesting timber.
  Where a community owning a forested land is to contract for harvesting logs, it will first need to enter into a CFMA with the FDA and then, based on the CFMA, enter into what the Community Rights Law (CRL) called Commercial use Contracts with any operator (third party, individual or company) it selects to do the actual logging operations under its CFMA. This is the only way;
- The communities will own the land, not the forest resource, but they will now be part of any forest-logging contract, through CFMAs.
  The community owns the land, but not any natural resources* including timber growing on the land naturally and not by artificial generation or regeneration;
  *The question of who own the natural resources is answered by the Liberian Constitution: It is for the Liberian people as a collective. Hence, minerals beneath the soil

[57] To the extent, of course, that such Government land has timber and the timber has not already been a subject of any FMC or TSC

are for the Republic of Liberia, and only the Republic can authorize their exploitation. Similarly, natural vegetation on a land belongs to the Republic, and only the Republic through FDA may authorize the harvesting of such natural growing timber. The Republic/FDA does this through CFMAs in respect of community-forested land or through PUP in respect of private land and through TSC and FMCs for Government forested land.

- What about natural resource management associated with the land? Response: The community holding the CFMA will be primarily responsible for the management of the forest resource in the community forest. Sustainable forest management responsibility is on the party holding the forest license.
- Whether this is good news for the management of forest land and resources in Liberia remains to be seen, in comparison with the concession model, in terms of responsibilities (Who will manage the forest resource?), areas and volumes (much smaller), duration (reduced cutting cycles already observed) and requirements (What management plans?). Coupled with the other decentralization act (See 'Local Government Act' above), this could imply challenges in terms of centralized governance and control by the forestry authority, including local corruption challenges.
  Response: The Local Government Act does not have any significant bearing on the land tenure system as it leaves land management issues to the Land law and the Land Authority. The Local Government Act only speaks of defined authorities to be exercised by local government;
- The governance challenge created by CFMAs is publicly recognized by the VPA partners, with reference to the previous PUP scandal: "Through Community Forest Management Agreements (CFMAs), communities are increasingly establishing ownership of forests and selling logging rights to timber companies. Exports from CFMAs already match that from private concessions and the future expansion of commercial logging will mostly take place in community forests. *Yet community forests need to be kept in close check as they might be a potential loophole in the law that logging companies can exploit to benefit from lower regulation and taxation.* The widespread mis-selling of Private Use Permits (PUPs) by the FDA in 2010-2012 led to condemnation, a Presidential order to shut down this abuse and the prosecution of FDA staff including the Managing Director. *Some express concern that something similar could happen again with CFMAs if they are not properly regulated and monitored.*" (EU Liberia 2019-21 Terms of Reference AM DP, 15 January 2016, 1.4);
- Note for future attention: Several, if not all CFMAs are previous PUPs recycled (stakeholder comment, 15.10.2018).
- As per Art. 13. Business Licenses and Permits in the Local Government Act: " ... counties, cities, township and boroughs shall collect fees for issuance of annual business licenses and operating permits, ... [which shall] include: a. Operation of power chain saws for extraction of timbers [i.e. for chainsaw milling, in accordance with the drafted Chainsaw Regulations which provides for payment of chainsaw permit fees. Response: What the Local Government Act says is that such fees will now be collected by local government officials, and not the LRA at the central level;
- As per Art. 14. County Social Development Fund: *... the central government shall transfer to county governments impacted by the operations of concessions, the annual contributions agreed in the concession agreements signed between the companies and the Government of Liberia.*

For further attention, might this in practice include most forest taxes and fees including, for Art. 13 and Art. 14 combined:

- Auction Fee, Bid premium, Land Rental Bid Fee, Sawmill Permit Fees, Timber Export License Fees, Chainsaw Permit/Lumber Fees?
- Area Fee, Chain of Custody Registration Fee, Annual Contract Administration Fee, Annual Coupe Inspection Fee, Barcode Issuance Fee, Block Inspection Fees, Stumpage Fee, Forest Product Fee?
- Waybill Fees, Log Export Fees?

Also implying fewer resources for the central government budget, which is already a challenge for the FDA.
Response: The Local Government Act defined the fees that will be paid to local government, although they have heretofore been collected by the central Government. (There will admittedly be some challenges with the tradition, but that is the law.)

Conclusion:

Two new laws were adopted on September 19, 2018:

- The **Land Rights Act** details the various categories of land recognized and protected in Liberia, now including customary or community land, and details its features and how it can be acquired, leased and managed; and
- The '**Local Government Act**' grants to *local government* substantial authority and control over many activities that were being handled from Monrovia by central MACs.

In summary:

- Under the new Land Rights Act, land is now presumed to be customary, unless clear evidence is shown that it is either a private land or a Government land. Only CFMA can be awarded over community land. The community will be primarily responsible for community forest management and for passing commercial use contracts with logging operators.
- *Existing forest concessions* located on newly recognized customary land will remain valid. In future, though, there is likely not to be any more Government land that would have timber to allocate *new concessions* (FMCs, TSCs).
- The impact on the management of forestland and resources in Liberia remains to be assessed but is likely to be significant, in comparison with the concession model, in terms of capacity (to manage the forests), areas and volumes (much smaller), duration (reduced cutting cycles already observed) and requirements (management plans possibly simplified).
- The governance challenge created by CFMAs is publicly recognized by the VPA partners, that something similar to the previous PUP scandal could happen again if CFMAs are not properly regulated and monitored and logging companies can benefit from lower regulation and taxation.
- The coupling with the decentralization act ('Local Government Act') could imply further governance challenges for the FDA and GoL since local governments shall now collect fees for issuance of annual business licenses and permits, which includes chainsaw milling, and the central government shall transfer to county governments the annual contributions from concessions. This could

imply a reduced control on revenue collection and fewer resources for the central government budget, which is already a challenge for the FDA, and uncertainty about the (transparent and appropriate) use of these then local government revenues.

Subject to further analysis, the IA registered two new RISKS on the basis of the above summary:

Medium Risk 4 (MR 4)
Identified RISK factor: Adoption of new Land Rights Act in Sept. 2018, strongly promoting community forestry (through CFMAs)
Identified RISK description: Negative impacts on land and forest management due to limitations in: capacity (of communities to manage the forests), areas and volumes (much smaller), duration (if reduced cutting cycles) and requirements (simplified management plans)
Recommendation: CFMAs need to be properly regulated and monitored so that logging companies do not benefit from lower regulation and taxation

Medium Risk 5 (MR 5)
Identified RISK factor: Adoption of new Local Gov't Act in Sept. 2018: local governments shall now collect fees for issuance of annual business licenses and permits (including chainsaw milling); central government shall transfer to county governments the annual contributions from concessions. Coupling with the Land Rights Act.
Identified RISK description: Further governance challenges for FDA/GoL: reduced control on forest management (see MR4) and also on government revenue collection by the central Gov't, fewer resources for the central budget, and uncertainty about the use of the new revenues by local governments.
Recommendation: Share an impact assessment of these two new laws with the stakeholders and assess the need to design an adaptation plan to mitigate the risks.

A new section on CFMAs has been created in this Audit 4 report (6.1.1.10, Vol.1) where the situation of this particular type of forest contract is being monitored. The above risk MR4 will be regularly reassessed against new information.

7.3.7 Current relevance of the Legality matrix / Urgent need to update and review the Legality matrix

This review was previously considered completed and was moved from 6.4.3 hereto.

Useful references:

- In the previous Audit 3 report: 6.4.3;
- In the Audit 2 report: 6.1.1;
- In the Audit 1 report (A1R): 2.1.1 (in 2.1 'Main C&Rs', derived from 6.1.1.1 and 6.2.2.3 in 6 'Conclusions, further IA action, and recommendations to the JIC', themselves derived from the audit findings in 5.1.1.1).

Specific points of attention for the process (from A1R, updated):

- **All *Indicators*** in the Legality matrix (LM) of the VPA are *apparently* **a transposition of Liberian Law** since they all contain a reference to one or several laws. This was confirmed by the IA Legal expert as being the intention, that all requirements in the LM should be backed by law, which is indeed the case *at Principle and Indicator levels*.

  Example from the LM to illustrate this, for Principle 1, Indicator 1.1 (See 'References', last row):

<table>
<tr><td colspan="3">PRINCIPLE 1: LEGAL EXISTENCE/RECOGNITION AND ELIGIBILITY TO OPERATE IN FORESTRY SECTOR

The forest contract or permit holder is a legally recognized business, community or an individual eligible to operate in the forestry sector</td></tr>
<tr><td colspan="3">Indicator 1.1 The Contract or permit holder is a natural or legal person duly registered with the Government of Liberia and/or recognized by the FDA</td></tr>
<tr><td>Verifier</td><td colspan="2">Contract or Permit Type</td></tr>
<tr><td>1.1.1 For a contract holder that is a registered business, a notarized affidavit executed by its CEO declaring that its owners do not include prohibited persons</td><td colspan="2">All contract or permit types whose holder is a registered business</td></tr>
<tr><td>1.1.2 …</td><td colspan="2">…</td></tr>
<tr><td>Verification Guidance</td><td>Verification method</td><td>Verification frequency</td></tr>
<tr><td><u>Objective</u>:
The objective of this procedure is ...
<u>Regulatory Control</u>:
Liberian law requires ...</td><td><u>Description</u>:
...
<u>Verification means</u>:
…</td><td>Annually</td></tr>
<tr><td>References: GBL (4.3 to 4.5); COCS SOP(4)</td><td colspan="2"></td></tr>
</table>

- A question is whether the LM only includes requirements that are all backed by law, as suggested in the VPA[58] or, if not, what are the consequences of this (for the current version and future revisions of the LM). **Some requirements in the Legality matrix** are reportedly **not contained in the legislation** - in this regard the LM goes beyond the Law - and could therefore possibly be regarded as illegitimate (groundless) unless these requirements are further confirmed by some regulation.

  The VPASU (has not analyzed this particular issue yet but) provided the two examples of Verifiers 8.1.2 and 8.1.4 that are not by-law:

  - 8.1.2 Quarterly report submitted by contract holder or timber processor to the Ministry of Labor;
  - 8.1.4 Attestation of compliance issued by the Ministry of Labor in favor of contract holder or timber processor.

  The IA Legal expert confirmed that many of the Verifiers in the LM were in fact suggested by experts, not lawyers, as practical means to assess and

[58] Ann. II, 4.1a: "…each [principle] is divided into a number of indicators representing the *legal requirement that must be complied with*. (…) "

demonstrate compliance with the Indicator (which is the function of a Verifier), implying some level of *interpretation* or even, in some cases, of *anticipation* of what could be developed and used in future.

However, elements that are not *binding* like law may still be *enforceable* simply because they have been accepted as part of (and proof of compliance with) the LM. Clearly, these elements will need to be reviewed to renew such acceptance.

A preliminary review of the LM should seek to allocate a reference in the Law for each and every requirement, therefore at Verifier level, at least. While doing this, there is a need to ensure that all references are accurate. For example, the "COCS SOP(4)" may no longer exist as such (i.e. might be renumbered) in revised COCS SOPs.

- Whether contained in the legislation or not, **some requirements** in the LM are considered to be **not, or no longer, relevant** (possibly unnecessary, inapplicable, inaccurate, not implementable, not auditable, too onerous etc.) and, as such, are not enforceable in practice. This occurs mostly at the Verifier level, but also in some cases at Indicator level.

  Examples of this were provided, as prepared during a capacity building workshop and field audit arranged by VPASU in 2016 to train up stakeholders but also to identify gaps in the LM for follow up: see below, the list of Issues identified with the reference of the clause (Verifier) in the LM, as compiled in the following document 'Annex 5' with a paragraph underneath.

Table 7: Annex 5. Identified Ambiguities in the Legality Matrix for Follow-up

Clause	*Issue identified*
1.1.2	MOFA should be replaced with Liberia Business Regularity (LBR)
1.1.3	Is the letter of recognition from FDA a valid option?
1.2.3	Should "blind trust" not be included? Maybe a new verifier?
2.2.1	Is it procurement plan or concession plan?
2.2.1 & 2.2.2	Change "Ministry of Planning and Economic Affairs" to "Ministry of Finance and Development Planning"
2.6.2	Is "enforcement report" correct? Should it not be "justification document"?
3.5.2	Verifier requires sanctions to be raised by FDA, but there does not seem to be a protocol in FSC allowing for fair and consistent raising of sanctions, where required.
4.1.3	Is "Document expiry: annual" correct? Should it not be "5 years"?
4.2.1	"Minimum cutting diameter" is no longer App XIV in the Code of Forest Harvesting Practices
4.2.3	Declaring entity should change from company to FDA
5.5.1	Add the requirement to comply with: ▪ Environmental permit conditions ▪ Pp. 18 and 1 of the Code of Forest Harvesting Practices
6.2.1 vs. 6.2.2	What is the difference between a log data form and log data verification form

6.3.2	What is form 14?
6.4.1	This procedure still under development – now in draft form
6.5.1	This procedure still under development – now in draft form
6.6.1	This procedure still under development – now in draft form
6.6.5	What has SOP37 been replaced with in the new CoC procedures?
8.1	In revised labor law, skilled and unskilled labor has apparently been changed to formal sector and informal sector. This need(ed) to be checked.
8.1.1	Should "skilled and unskilled workers" be replaced with "formal and informal sector"? Seems to be a change in the new labor legislation of 2016
8.4	Minimum age of "sixteen" in the indicator needs to change to the same as in the verifier – "eighteen"
8.6.1	Sections referring to the CFHP need to be updated to reflect the new relevant parts in the new code
9.2.4	Explanation required of "manager's check"
9.3.1	Change MOF to LRA
9.3.6	What is the CoC fee referred to here?
9.4	Change MOF to LRA
10.1.1	Is valid export registration valid to forestry company or only to sawmill?
10.3.1	The MIDB maintained by LVD – is it updated and running?

The document goes: "It is also strongly recommended that the Legality matrix is reviewed in 2017, as it is *not possible to successfully implement the current Code of Forest Harvesting Practices* due to shortcomings that have been identified over the last few years during mock audits, field testing and training interventions that have been held in Liberia. The update on the LM should also incorporate the new regulations that are drafted and pending approval by FDA (…)".

- There are also issues of "**remaining imperfections in Liberia's laws and regulations"** and the "**evolutionary" nature of the Legality matrix**, as anticipated in as per the VPA[59] which mentions "…a number of *ambiguities, gaps and inconsistencies in the existing laws, regulations and policies that underlie the legality definition*, which need to be addressed" and (…) "It is expected that such legal reforms would be completed by 2013, and that *the legality definition will be updated thereafter…"* (See 7.3.7).

  It is clear that the 'Legality definition' (LD) – which contains the LM - that is applied in forest sector control practice must keep evolving i.e. it needs to be updated from time to time[60]. It has not been updated since its initial version of 2011 in the VPA (See 7.3.7).

[59] Annex II, Appendix A, Section 1 (Plan for forestry policy and law reform), Paragraph 1: "The GoL therefore plans to carry out legal and policy reforms (…). It is expected that (…) the Legality Definition will be updated thereafter to reflect these amendments."

[60] The VPA guidelines provide that a country's Legality matrix is to be evolved by stakeholders and will be implemented until changed by the country stakeholders. However, changing it requires consultation and drawn out processes. Hence, to say that it must be "evolving" has to be considered carefully as not to suggest that it can be changed on an annual basis or such other regular frequency.

The possibility to change the verification guidance to reflect further development of systems and procedures, in therefore revised versions of the LM, is specified in the VPA[61].

Further findings indicate that there is a consensus on the need to address current problems in the LM.

The lack of a clear division of roles and allocation of responsibilities, especially in the Legality Matrix, has been identified under 6.1.14.2 in A4 Vol.1 as one more reason to review/update the LM.

In relation to the stated "*ambiguities"*, according to the IA's Legal expert the requirements in the LM are often written in a condensed way (summarized) and some accuracy was inevitably lost. Therefore the piece of legislation to which the requirement refers (or should refer) remains the source of the truth in case of any doubt; it is usually more complete and detailed, thus clearer. *The LM should always be read in conjunction with the corresponding legislation.*

- **New requirements** (from new regulations), not yet transposed into the LM, are therefore currently "missing" and **should be incorporated**. New regulations as they are developed and coming to force (See the analysis under 6.1.1.8) should probably generate additional Indicators and Verifiers.

  For SGS, the need for updating is obvious, f.ex. CFMAs are not in the VPA, although they are going to be dominant in numbers (if not volumes). (June 19, 2017 meeting with SGS PM)

- The IA has received a suggestion that there might be scope for the LM to cover "reduced impact logging" requirements to a greater extent (as may be included in the CFHP [To be confirmed] and may not be currently reflected in the LM), as an important sustainability factor for forest management.
- To be investigated: current instances in the LM and possibility, in order to satisfy some requirements, of more widely using **attestations of regulatory compliance** with administrative obligations **issued by the relevant bodies** in areas of the Law not considered critical for forests and people (meaning operator is "under control" in that area, without having to go into detail), under the understanding that this could allow the removal of a number of non-critical administrative requirements that are currently blocking for a FLEGT License.
  Identified precedents so far:
  - Verifier 8.1.4 Attestation of compliance issued by the Ministry of Labor in favor of contract holder or timber processor (above in this chapter);
  - Tax Clearance Certificate issued by the LRA to taxpayers, "showing no tax arrears at date of submission" (See 6.2.6.3, Vol.1). (LM Verifier 2.3.3; also 9.1.1, and 9.3.1).
- The VPA partners may not have been convinced on the opportunity to engage in a revision of the LM so far, reportedly because it was felt it will trigger another long process while the priority could be put on making the current LM work in view of the limited time ahead to operationalize the VPA. The IA, however, is strongly suggesting that this issue is critically undermining the current VPA implementation process, to the point that it sees it as **highly unlikely that a FLEGT License will ever be issued on the basis of full compliance with the**

[61] "The verification guidance (indicating Objective, Regulatory Control, Verification Method, and Frequency) reflects current thinking but may be subject to change during further development of systems and procedures." (Ann. II, A2.1b)

existing LM - because this is technically impossible. This links to the deterring effect of the current "full compliance" obligation being unrealistic and impractical and that risks blocking the system and encouraging circumvention or "adaptation" behaviors on both (private operators/ Government) sides (See 7.3.10). The IA rather strongly recommends for consideration by the JIC that **this process of updating and reviewing the Legality matrix is initiated as soon as possible** - in parallel with a gradual LM enforcement plan as per 7.4.11.2 herein.

- In relation to the discussion in 7.3.5.5 herein (on 'The VPA Legality Definition: an exhaustive representation, or a sub-set of Liberian law?'), and to the IA's Legal expert's understanding and experience, not all laws are to be in the LM. The country will decide which of its laws are so important that each must be satisfied before logs harvested in the country can be [accepted as] legal [for export purposes in the context of international timber trade regulations]. This determination does not require including every law in the LM. To do so would suggest never-ending amendments of the LM.

The need for the VPA 'Legality definition' (and the associated LM) to keep evolving has led to the recording of an **ISSUE** (ref. **HII 2)** in the IA Progress DB:

ISSUE HII 2
Impact level: High
Identified ISSUE: Legality matrix needs to be updated and reviewed
Recommendation: Proposed process (See Main C&R 3.3, and 7.3.7 Current relevance of the LM / Urgent need to update and review the LM).

FDA/IAWG response to the Main R&C in the Audit 3 report

The GOL recognizes that the LM needs to be updated. At the 7th JIC it was agreed and a 7 member committee including an EU Representative and the FDA.

Mitigation Measure: The VPA SU-2 has completed the first draft of the Revised Legality Matrix, and will be reviewed by the seven-member committee and send out to stakeholders for consultation

Responsible Department: Community Department

Time Frame: Aug-19

Reference: Draft available at the VPA SU-2

Remarks: Seven-member committee to meet and review the draft document before the 8th JIC

IA review of FDA/IAWG response:

- The 7th JIC created a 'Committee on the Inclusion of the CFMAs into the VPA's LM'. ToR only cover a portion of the issues raised herein by the IA.
- Copy of revised LM to be provided to the IA.
- Meanwhile, Issue HII 2 shall remain open.

The conditions in which an annex to the VPA, such as the LM, can be amended are analyzed in the IA Inception report: the VPA (Art. 26.3) provides that **amendments to the VPA annexes can be made by the JIC** and such amendment shall enter into force on the first day of the month following the date on which the amendment was made, consistent with Art. 26.2.

The Baseline review of relevant VPA requirements related to documentation of the legal framework (e.g. Art. 3; Art. 4; Art. 7) continues in the following sections.

Conclusions derived from A1R, 2.1.1 (updated)

All Indicators in the Legality matrix (LM) of the VPA, being a transposition of Liberian Law, currently include references to existing laws and implementing regulations or associated procedures. These references to the Law may no longer be accurate and do not exist for each and every requirement. Moreover, all existing requirements of the LM do not appear to be enforceable in practice; this is because some of them are considered no longer relevant (i.e. unnecessary, not applicable, inaccurate, not implementable, not auditable, onerous etc.). This occurs mostly at the Verifier level, but also in some cases at Indicator level. Some elements are not contained in the legislation but were accepted as proof of compliance with the LM (like quarterly reports by EPA and FDA and MOL, reports that must be submitted by the operator) and will need to be reviewed to renew such acceptance. Until then, it may be considered that some requirements are "groundless", if not illegitimate, and cannot generate violations of the Law, and that the LM currently goes "beyond the Law" in that regard.

The above issues add to other issues of remaining imperfections in Liberia's legal framework and of new requirements that are not yet transposed into the LAS.

Together, all these issues strongly suggest that the LM of 2011 now needs to be both updated and reviewed, along with some of its underlying regulations and institutional arrangements. The IA has found that a consensus exists in fact that problems in the LM are undermining its applicability and urgently need to be addressed. To this effect, it is recalled that the JIC may lawfully amend a VPA annex.

Follow-up during Audit 3:

Regarding new regulations, the FDA is said to be working on a "new LM" for CFMAs (see below, where extracts from the 6th JIC (June 2018) Aide-memoire are recalled).

Another emerging issue (in 6.1.14.2) has been the lack, in many cases, of a clear and accurate allocation of a particular task to a specific government body, particularly when it comes to figuring out which FDA department is in charge where it just says "the FDA". This makes the description and assignment of roles and responsibilities difficult to understand (associating the right role and responsibilities with the right institution) and LAS' effectiveness difficult to assess.

The need to address this issue shall be taken into account in any review of the LM. The IA is broadly observing the same lack of clarity regarding roles and responsibilities when auditing each department, which is where the effort probably has to start.

Relevant extract(s) from the 6th JIC meeting (June 2018) Aide-memoire:

- **Community Forestry Management**

  27. The FDA Community Department, together with the VPA Support Unit, explained that in order to prepare for the *future inclusion of Community Forest Management Agreements (CFMA) in the legality matrix of the VPA [See 6.1.1.10]*, work was being done on describing their legal requirements, in particular on the awarding process. Further discussion will occur in July, in collaboration with stakeholders. FDA added that internal counsel will also look at the process to ensure it is in line with Liberian laws.

28. Through their investigation work in Sewacajua, the Sustainable Development Institute noted that irregularities are occurring, in particular when it comes to the respect for the "9 steps" for establishing a community forest. In response to such concerns and to demonstrate the adequate monitoring of CFMAs by FDA, both FDA and EU insisted on the principles of transparency and collaboration.

29. As foreseen in the VPA, Liberia and the EU agreed during the JIC to engage more actively and formally on *integrating timber sourced from commercially-oriented CFMAs, into the timber legality assurance system. This integration will require a revision of the current legality matrix*. The EU and Liberia agreed to move this process forward by *forming a seven-member committee that will take the lead and report directly to the JIC on progress on this work*. In order to support the collection of evidence that would better inform this process In cases where field exercises are conducted, all members of the committee shall approve the results, reporting those results back to the JIC. The EU and Liberia will agree on the committee´s terms of reference and scope of membership before the next JIC.

Liberia further clarified that this Aide Memoire shall have no bearing on the harvesting and shipment of logs from existing CFMAs; nor on the ongoing processing of CFMA applications. However the reports from this JIC-formed committee, could be used to further inform the legality picture, ongoing allocation processes and controls around CFMAs. Liberia further noted that as of the signing of this Aide Memoire, FDA shall place a freeze on all new applications for CFMAs, until further discussion of this topic at the next JIC.

30. In this context, the FDA explained that this information is available on the Forest Atlas and agreed that it will be linked to the FDA's website to guarantee access to information and ensure that documents are preserved. The EU prompted the FDA towards this direction as information on CFMAs and their allocation has been lacking until today. The EU asked that by the next JIC a comprehensive set of data on the CFMAs is available on the website. The list of the current CFMAs is attached as Annex 4 of this Aide-Memoire.

31. All stakeholders agreed on the need to continue using the existing multi-stakeholder structures, in particular the National Multi Stakeholders Monitoring Committee (NMSMC), to voice and address concerns.

Copies of presentations and other supporting material provided to the IA:

- JICS NUCFMB PRESENTATION- Final version.pptx

  This is the presentation made by the NUCFMB President on the 'Status of Draft Template for Commercial Use Contract for Community Forests' during the session on 'Community Forestry Management Agreements and the Legality Assurance System (LAS)'.

Text of the presentation:

- Existence and Achievements of the NUCFMB
  - NUCFMB was established 2015, Register with the Government of Liberia, Bylaws & constitution and Article of Incorporation
  - 2017, NUCFMB leadership was inducted to offices by FDA
  - NUCFMB Partner with; FDA, HPA, Client Earth, World Bank, EU, SDI, VOSIEDA, LAVI, FIFES, NGO Coalition, VPA, FCI, Green Advocate
  - With the assistants from Client Earth, HPA, SDI, NUCFDC along with CFMBs developed commercial Use contract (CUC) template as a legal working tools for entering third party agreement
  - FDA-RIU World Bank support to NUCFMB/MOU to be signed.
- Importance of the draft CUC template
  - Commercial Use Contract (CUC) is a contract between an authorized community which is interested in forming an agreement with a third party. This agreement is not a social agreement and neither a sponsorship agreement.

- As the Social Agreement Guide, the Commercial Use Contract (CUC) template has been developed to support Authorized Forest Communities wishing to negotiate a medium scale CUC with a third parties for the commercial exploitation of their forest.
- This CUC Template is a Medium Scale Commercial Use Contract
- It is a template, which is a guard to the community and third parties in completing and negotiating terms and agreements of every medium term contracts.

- Development of the CUC Template
  - First draft presented during Legal Working Group Sessions held on February 28 & March 1, 2018
  - Revision based on inputs by CFMB, NGO, LWG and resource persons
  - SDI Workshop held the NGO Coalition office on June 7, 2018 with members of the CFMB
  - The draft template was officially submitted to FDA on September 28, 2018
  - FDA, thru its in-house lawyer, provided feedback & comments to HPA on December 7, 2018;
  - Further discussions were held on the FDA's comments with the FDA's lawyer and the NUCFMB;
  - Second official submission was done on February 19, 2019 to the FDA by the NUCFMB for approval
- CONTENT OF THE CUC TEMPLATE

Main Contract Provisions	*Main Contract Provisions*	*Main Contract Provisions*
1) Right To Extract/Sell Logs	9) Planning, Monitoring And Implementation;	17) Notices
2) Term Certain	10) Assignment	18) Waiver
3) Payments And Payment Terms	11) Damages	19) Amendment/ Modification
4) Local Employment And Training	12) Dispute Resolution	20) Severability
5) Roads And Community Infrastructure	13) Termination	21) Integration
6) Sustainability	14) Force Majeure	22) Binding Effect
7) Requirements Before Commercial Felling	15) Taxes	23) Signatures
8) Other Obligations Of The Parties	16) Governing Law	

- Annex A – Detailed Terms and Conditions
- Annex B – CUC Contract Area Map
- Annex C – Calculation Formula M3/Log
- Annex D – DBH Cutting Limits

- Next Steps for the Draft CUC Template
  - There is an immediate demand from the CFMBs to have the template finalized and available for use.
  - The next course of action is to conduct a validation workshop in order to have the template finalized.
  - The NUCFMB will provide support to individual CFMBs during the negotiation of their Commercial Use Contract with third parties.
  - As provided in law the FDA should review and approve each individual CUC after negotiation before final signature
  - NUCFMB requests FDA to sign REDD+ Implementation Unit-World Bank support MOU.

Source: VPA-SU2 during Audit 4 regarding Update of the Legality Matrix
Origin: DRAFT section of VPA-SU2 First Six Month Report.
VPA-SU2 has proposed (in the Inception Report, Section 4.3.1) to prepare four (4) draft versions of the Legality Matrix to gradually incorporate VPA stakeholders' feedback. As summarized in table below, Version # 1 was drafted in July 2019. During the second six-month period, Versions # 2 and # 3 will be drafted as detailed in below table.

Table 8: Legality Matrix version control

VERSION NUMBER	DEADLINE	COMMENTS
Version # 1	First 3-month of implementation: July 2019	DAI senior TAF expert (Peter Aldinger), in consultation with EPA, MOL, FDA Community Forestry and Commercial Departments, Civil Society and Private Sector Organizations
Version # 2	Second Six months of implementation: mid-November 2019	Review by JIC-7-Member Special Committee and other stakeholders before submitting to LIC and Technical JIC
Version # 3	Second Six months of implementation: February 2020	Review of version # 2 by the LIC and Technical JIC and comments incorporated by VPA-SU2 + 7 member SC before next JIC. Only one JIC celebrated in February 2019, and next JIC planned for March 2020
Version # 4	Third Six months of implementation: TBD	Review and approval of final draft version # 4 by JIC incorporating comments from VPA stakeholders from GOL, CSO, PSO, international partners. Version # 4 is for the JIC Liberia to request European Union comments.

Challenges: By September 2019, the JIC 7-Member Special Committee (7MSC) mandated by the JIC since February 2019, had not reached quorum despite three attempts to hold meetings because some appointed individuals were not available. Consequently, this special committee has yet to start reviewing the draft Version # 1 completed by the VPA-SU2 and incorporate additional stakeholder comments received or to be received (e.g. Forestry Concession Review consultancy, MFGAP Project, EFI, FLEGT Liberia, Civil Society and Private Sector Organizations). The VPA-SU2 and 7MSC are expected to bring update report to the LIC and Technical JIC for way forward.
For further action: The rest is about the number of activated verifiers, as discussed in and to be added to 7.4.12 in Follow-up during Audit 4:
Source: VPA-SU2 TL, 02 November 2019
As of September 2019, about 46 verifiers have been "activated" by FDA/LVD/LiberTrace from a total of 132 verifiers. Since 2013, when the VPA was legally ratified, significant progress has been made regarding to forestry reform including traceability and making LiberTrace operational. However, the fact that no activation of new verifiers has occurred since 2016 when LiberTrace was launched, is preventing the VPA process for testing Liberian capabilities needed for meeting additional verifiers to activate in LiberTrace, defining corresponding overall resources and capacity building needs to eventually issue FLEGT Licenses. This is a big challenge to VPA-SU2 with responsibility to build capacity in key participating MACs (FDA, EPA, MoL), that if not addressed by 2020, issuing FLEGT Licenses would not be realistic for several more years to come. Activation of new verifiers

should allow VPA stakeholders to prioritize legality matrix compliance and concentrate on meeting those verifiers that could prevent issuing FLEGT licenses.
The previous VPA-SU project proposed in 2017 the activation of about 40 new verifiers that had been identified as "low hanging fruits", but this was not approved by FDA and questioned by SGS/LVD arguing lack of capacity by the MACs. VPA-SU found that a significant number of verifiers were being met but not reported, particularly those from Principle 5 (Environment) and Principle 8 (Labour).
VPA-SU2 strongly recommends the activation of new verifiers that are being practically met, without requiring them to be met for exports to avoid jeopardizing needed export revenues. Liberia can demonstrate significant progress towards VPA requirements and allow for prioritizing capacity building in FDA (LVD, LLD, Commercial Forestry Department) and other participating MACs with Legality Matrix verifiers responsibilities. This suggests that in order to issue FLEGT licenses, prioritization of activities and milestones timeline being proposed in the Forward Planner, need to be agreed upon by the VPA stakeholders.

7.3.8 Annex II - Broad institutional set-up of the LAS

7.3.8.1 Establishment of the Legality Verification Department (LVD)

This review of the initial establishment of the LVD was considered completed in Section 6.1 and was therefore moved hereto for archiving. Likewise, parts of the former Chap. 6.2.3 'Establishment (and functioning) of the LVD' related to LVD's *establishment* shall also be moved hereto.

As per **Ann. II, 3.1a**, the Liberia Verification Department (LVD) was to be established by the FDA as a new department in order to (i) verify compliance with the legality definition (LD) and (ii) operate the COCS.

LVD established by the FDA as a new department

There is ample evidence of the LVD being established as one of the current FDA departments:

- The LVD page of the FDA website exists[62], although it is still currently empty (only content is "LVD…")
- The LVD is mentioned on the FDA Organogram (organizational chart) that the IA has collected during the Audit 3 (See **Annex 8.1** to this A4 report).
- Establishment of the LVD is mentioned in many FDA and VPA reports, including official public reports:
  - The Joint Annual Report 2014[63];
  - JIC Aide-Memoires: "The UK and the GoL have recruited SGS to build, operate and transfer the LVD…"; "SGS has been working since October 2013 to establish the LVD within the FDA…" (1st JIC Meeting 140527-29 AM, Par. 7, 8); "The LVD has been established within the FDA." (2nd JIC Meeting 150610-12 AM, Par.11); and
  - The FDA Annual report 2015 (Establishment of the Legality Verification Department[64]);

[62] Under DEPARTMENTS, OPERATIONS, LEGALITY VERIFICATION (http://www.fda.gov.lr/departments/legality-verification/)
[63] "The Government is improving its capacity to regulate and verify the legality of timber through a new dedicated Liberia Verification Department (LVD) within the FDA (Executive Summary); "The FDA is also establishing two new divisions as foreseen in the VPA: the LVD and the LLD" (6.1)

- The above shows that the LVD was factually established through the provisions of the **Ann. II, 3.1b**, whereby "a service provider (was to) be contracted on a 'build, operate and transfer' (BOT) basis for the first five years to develop the necessary verification methodology and to build the capacity of the FDA departments and divisions involved in implementing the LAS". The LVD is one of these FDA departments, as per Ann. II, 3.1a, and the contracting of SGS provides the needed factual evidence of LVD's initial establishment;

  - See: evidence on the existence of the COCS, built and being operated by SGS since 2007 (7.3.3, Introduction of the chain of custody system (COCS))
  - SGS further provided the ToR of its DFID contract (LVD capacity building in BOT phases), which stipulates as follows (extract):

    – To meet its VPA obligations, the Liberian Government intends to establish a "Liberia Verification Department" (LVD) as a new department within its Forest Development Authority (FDA). The LVD will ...

    – A Service Provider is required to establish, implement and manage the operations of the LVD for a period of 5 years. In addition to managing the operations of the LVD, the Service Provider will be expected to progressively build the relevant capacity of the FDA so that, by the end of the contract period, the functions of the LVD, including the management and operation of the LAS can be performed by the FDA.

  - The IA has requested but has not yet been provided with a copy of SGS's 5-year contract(s) reportedly starting October 2013.
  - SGS posted a document titled 'The Roles and Functions of the LVD' on the FDA website [65] that covers the 'Prescribed functions of the LVD', the 'organizational structure of the LVD' and the 'Project progress monitoring' arrangements. See further below in 6.1.7.3.

    Note: The initially called '**Liberia** Verification Department (LVD)' seems to be now consistently referred to as the '**Legality** Verification Department (LVD)'.

  - SGS also provided a document[66] that presents four organizational charts for the LVD, respectively of the LVD Head Office in Monrovia (Dec. 2017), the LVD Regional Office also based in Monrovia (Sep. 2017), the LVD Regional Offices of Buchanan and Greenville (Sep. 2017), and LVD Staff increment as of Sept. 2017.
  - Then the abundant documentation of SGS' activity under its LVD mandate also provides factual evidence of LVD's operational functioning since 2013.
  - The IA conducted a series of office and field audit meetings in April 2018, which provided tangible evidence of SGS/LVD being established and functioning. Details are provided in Chap. 6.2.3.2 (Current establishment of the LVD and handover process) in this report.

[64] The Voluntary Partnership Agreement (VPA) signed between the Government of Liberia and the European Union (EU) on 27 July 2011, which came into force on 1st December 2013, created the Legality Verification Department (LVD). Its capacity is being built by the SGS (a service provider) to compile verification evidences on the Private Timber Companies with regards to their compliance with the VPA requirements. This new department created as a result of the VPA between GoL and EU is being funded by the national budget thereby enabling the FDA to recruit the required staffs whose capacities are currently being built by SGS with funding from DFID.

[65] Under 'LIB. FLEGT / VPA', DOCUMENTS (www.fda.gov.lr/wp-content/uploads/bsk-pdf-manager/SGS_communications_Roles_&_Functions_of_the_LVD_12.pdf)

[66] 171207_LVD Organizational charts_FDA_LVD.pdf

LVD established to (i) verify compliance with the legality definition (LD) and (ii) operate the COCS

These functions are indeed covered by the ToR of the *Service Provider (SGS):* "The LVD will take responsibility for LiberFor's current tasks (COCS management[67]), as well as developing and installing systems for timber tracking and for verifying operators' compliance with the legality definition that fully meets the VPA requirements ». (SP ToR, Introduction, 5).

As per **Ann. II, 3.2a-b**, the LVD is due to "collaborate with the other relevant government agencies responsible for specific aspects of forest sector regulation. These include "other" FDA departments / divisions and EPA, MOCI, MFDP, MOL, as represented in Figure 1 in the VPA Ann. II, 3 (Figure 3 below). These agencies will "submit evidence to the LVD on operators' compliance with the LD" in their respective area.

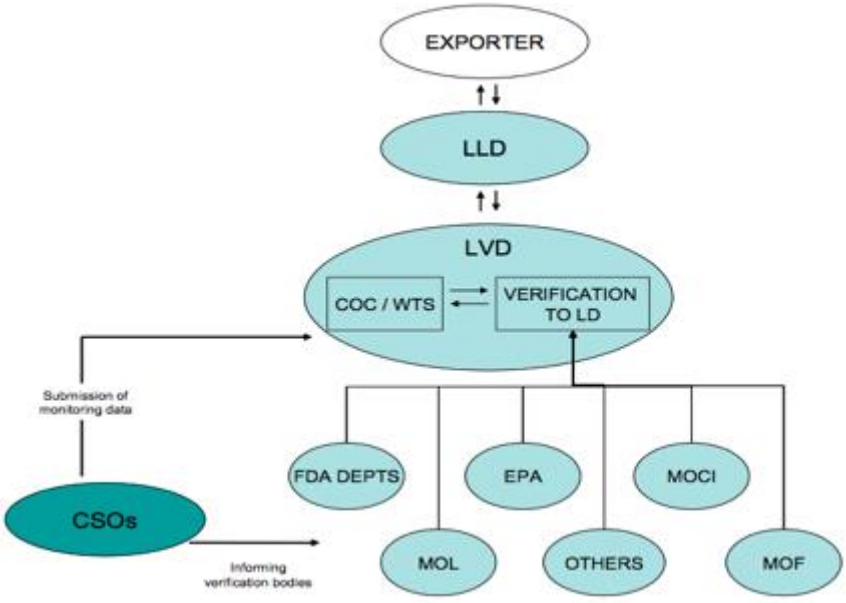


Figure 1: (*In Ann. II, 3)* ***Institutional set-up for verification and licensing***

But because the outlines of LV will be *further developed and put into practice during implementation of the VPA* (as per Ann. II, 1d11-12 reviewed under 7.3.2, Introduction of Legality verification), the functions of the LVD may have evolved from their definition in the VPA.

As part of such evolution, the already mentioned SGS document titled 'The Roles and Functions of the LVD' (in its 'INTRODUCTION' / 'PRESCRIBED FUNCTIONS OF THE LVD' sections**)** identifies the **four functions assigned to the LVD through SGS's mandate** as depicted in the below Figure 4:

[67] "In 2007 the Government of Liberia entered a Build-Operate-Transfer (BOT) contract with the Swiss inspection firm Société Générale de Surveillance (SGS) to implement the "Liber For" project, a Chain of Custody System (COCS) that tracks logs, harvested in accordance with timber rights contracts from stump to port of export; to assess and invoice fees and duties due to the Government; and to issue export permits on receipt by the Government of payments due. The COCS relies on a web-based information system using GPS and barcode technology developed by the UK software firm, Helveta Limited. This contract is limited in duration and will terminate in near future"
(In PO 6380 Contract Section 3 _LVD Establishing ToR.pdf, Introduction, 4 – DFID, Nov. 2013)

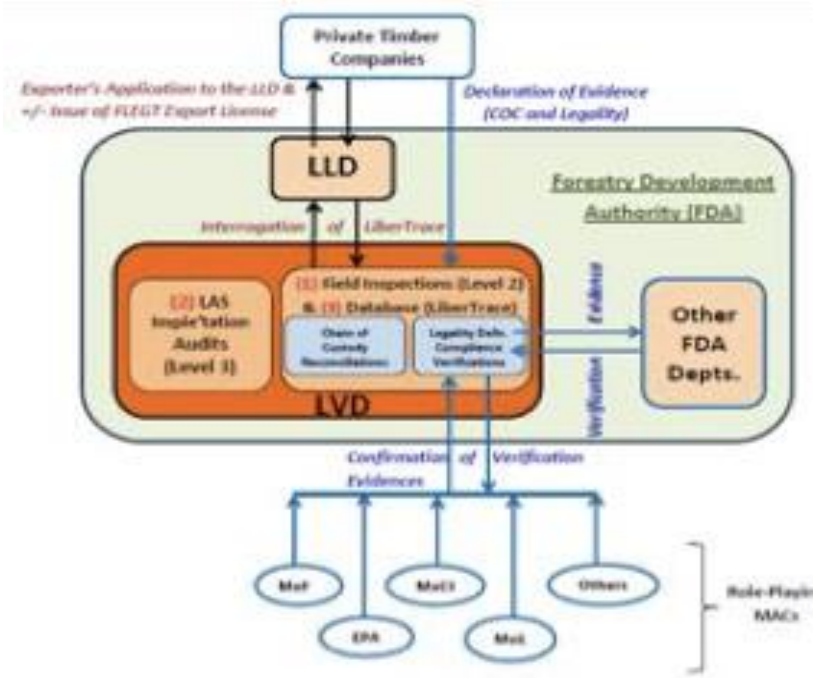


Figure 2** (low quality)**: LVD Functions & Verification Evidence Gathering Linkages (Derived from VPA Annex II)

Legend: ***Three main LVD functions** numbered above are in **red**; and **verification evidence** gathering is in **blue lines***

1. "In the **first instance**[68], the LVD will be responsible for ***field inspections*** [see Level 2 in above Figure 4] in connection with forest concession holders' compliance with:
   a. The Chain of Custody System (COCS) or Traceability;
   b. The forest management and harvesting requirement of the Legality Matrix (i.e. Principle 4 of the Matrix).
2. In the **second instance**, the LVD will be an ***auditor of the implementation of the VPA*** and the compliance by the following VPA implementing partners with their obligations as specified in the Legality Matrix. These include:
   a. The LVD of the FDA[69];
   b. Other VPA role-playing FDA department/divisions[70];
   c. Role-playing Liberia Government Ministries Agencies and Commissions (MACs), and the
   d. Private Timber Companies.

   The audits will cover forest management and administration, timber processing, transport and the related trade activities under the regulatory control of the FDA.

[68] "First, second etc. instance" may refer to an implementation schedule for implementation of the SGS/LVD project?
[69] Note: The conflict of interest issue raised under 6.4.9 is obvious from this presentation.
[70] Same

The LVD will compile verification evidences from the other role-playing FDA Departments/Divisions and the Private Timber Companies with regards to their compliance with the requirements of the VPA. Where inconsistencies are identified by the LVD in the gathered verification evidences, these will be rectified or confirmed with the relevant Government Ministry, Agency or Commission (i.e. MACs) that is the source of such evidence
(see above Figure 4 – LAS Implementation Audits [Level 3]).

3. In the **third instance**, the LVD will ***maintain a database (i.e. LiberTrace)*** that will contain the following three distinct sets of data [see LiberTrace in Figure 4 above]:

a. The Traceability (COC) data – to facilitate reconciliation of data generated along the entire process chain of wood products destined for export and the domestic market;

b. Legal documents to be used to confirm compliance of timber consignments with the requirements of the Legality Matrix, and

c. Legality Audit Data/information.

In this regard, the document explains: "The … Liberia Licensing Department (LLD) will issue FLEGT Export Licenses to timber exporter-applicants after confirmation of their fulfillment of all the necessary VPA requirements. The LLD will undertake this through the interrogation of the database of verification evidences (i.e. LiberTrace) to be compiled by the LVD (see Figure 1 [Figure 4 in this report])".

As per **Ann. II, 4.2c**: "The LVD will be in charge of data management, including updating records with the frequency set in the verification procedures".

4. The development of a Quality Management System (QMS) has been added by SGS to the above three roles as LVD's **fourth function**. The purpose of this is to ensure the delivery of quality services by the LVD in conformity with ISO 9001 with regards to: record keeping, internal and external communications, complaints management, interactions with stakeholders and internal monitoring of LVD's operations."

Evidence found for this fourth function:

- SGS / FDA LVD LIBERTRACE website
  Source: https://libertrace.sgs.com/Private/Default.aspx, 02/28/2018 05:15 PM
  "QUALITY MANAGEMENT - HOW TO SUBMIT A REQUEST OR COMPLAINT?
  The form attached to this article must be used to submit a non-conformity. Once completed the form should be sent to the email address: support@libertrace.com. Thank you for your cooperation.
  ATTACHMENTS: 20180218_Non conformity form.docx (18.845 Kb)".

Still quoting the SGS document, "In the performance of the above functions, the LVD **will not replicate any of the line or routine functions** of the respective role-playing FDA departments/divisions and MACs that are their legal mandates so as not to compromise their autonomy and accountability". No evidence of this provision[71] was found in the VPA and its annexes[72]. However, coordination to

[71] Or the similar statement that "the LVD shall not replicate any of the line functions of the respective FDA divisions and/or other Government Ministries involved in the implementation of the LLAS" (SGS/ FDA, Liberia Legality Assurance System (LLAS), Verification Framework, J. Laporte 2013)
[72] A search with the key letters "plicat" (for words like re-/duplicate/-tion) proved unsuccessful.

avoid duplication of efforts and conflicting roles seems to be the intention of the VPA, Ann. VIII (Supporting measures), 2. Implementing structures: "Institutional structures will be established to enable *smooth operation and coordination between government and non-government bodies* involved in implementing the VPA. In particular, *drawing on existing structures two new departments will be created* within the Forestry Development Authority (FDA), the Liberia Verification Department (LVD) and the Liberia Licensing Department (LLD). A mechanism for *coordination between government agencies* and increasing capacity in existing departments to take on new functions will be one priority for the first year.

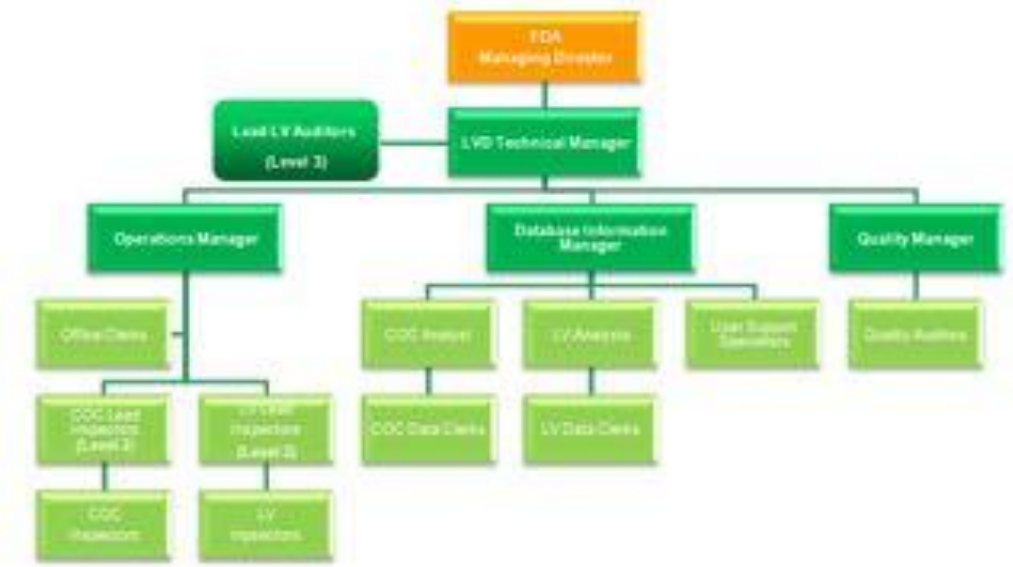
However, the **potential duplication of field inspection and possibly auditing roles** has emerged as a new issue during Audit 3 for further attention, between Commercial, LED and LVD, possibly created by the VPA itself or SGS's ToR (likely not intentionally for LVD but still a possible undesired outcome/ negative impact). This investigation will be initially conducted as part of the review of the respective roles of Commercial and LED (especially if it is confirmed that LED have an Internal Audit / "inspectorate" role), compared to LVD. It links to several issues that have been registered in the IA Progress DB about the conflicting roles of LVD (HII 8) and the lack of a clear definition of roles and responsibilities for LED, CFD and EPA, respectively, in the Issues referenced HII 21 and HII 26. It also links to the suggestion to clarify the four control levels in the LAS (further below).

The established functions of the LVD to ensure the realization of the above outputs are illustrated in Figure 1 and described in the subsequent sections [above]".

SGS's document, 'INSTITUTIONAL STRUCTURE OF THE LVD' section:

"The organizational structure of the LVD for the execution of its four functions as described above is shown in Figure 5 below. This is the expected structure of the LVD after five years, when the LVD is anticipated to be fully operational and independent from the Service Provider (i.e. SGS).

Figure 3: (low quality): Organizational structure of the LVD



The LVD Divisions and their respective roles are as follows:

- **Field Operations.** Chain-of-Custody and Legality Verification (LV) field inspections
- **Legality Audit.** Audits of the VPA implementation processes and those involved (i.e. the role-playing MACs and the private Timber companies). The Lead LV Auditor submits the VPA audit reports through the LVD Technical Manager to the Managing Director (MD) of the FDA.
- **Database Information Management.** For Chain-of-Custody reconciliations and checks of compliance with the Legality Definition There will be a Helpdesk for support to the LiberTrace web- applications.
- **Quality Management.** Development of a Quality Management System (QMS) to ensure the delivery of quality services by the LVD in conformity with ISO 9001."

One potential issue with the Figure 1 in Ann. II, 3, provided above (Figure 4 in this report): the Logging operators and processors are not apparent, unless all represented by the entity 'EXPORTER'.

Status: Part of this review is still in progress, in A4R, Vol. 1 (6.1.7.3). The analysis then continues below with the review of the Ann. II, 3.2c.

Ann. II, 3.2c requires that civil society organizations (CSOs) have a channel of communication they can use to provide the LVD and other relevant authorities with monitoring data on operators' compliance with LAS requirements (as indeed shown on the Figure 1 in Ann. II, 3, provided above [Figure 4 in this report]).

This is understood to be in place through CSOs' participation in the NMSMC, in the LIC and in the CS Independent Forest Monitoring. Liberian CS is however reputably weak in that regard (see the review of Liberian CS in 7.3.1.11).

Follow-up on this point with SGS/LVD during Audit 3, whether CS provides the COCS with monitoring data:

- Nothing is really happening in that way (i.e. as the VPA Ann. II, 3.2c requires). The COCS is not designed to accommodate this.
- A Verifier exists: No complaints from communities*; and LVD can store documents, as sources of information to act upon.

  Follow-up under Audit 4: The above comment seems to relate directly to the social agreements that affected communities negotiate with the contract holders as per Indicator 3.1. All a community can use to defend its rights is the Dispute resolution mechanism established as per Verifier 3.3.4. The "No complaints from communities" requirement indeed exists but it only concerns the negotiation of the social agreement with the contract holder (Verifier 3.1.3: Evidence that *no complaint* has been filed with FDA by an affected community alleging *exclusion from negotiation or failure of contract holder to negotiate*).

  For future attention: FDA complaint mechanism.

In view of the above, the IA registered an **ISSUE** (ref. **MII 13** in the IA Progress DB) about the requirement of VPA Ann. II, 3.2c (above) not being implemented:

ISSUE MII 13
Impact level: Medium
Identified ISSUE: COCS not currently designed to allow Liberian CSOs to provide the LVD and other relevant authorities with monitoring data on operators' compliance with LAS requirements (as per Ann. II, 3.2)
Recommendation(s): Allow CSOs/ Communities to access relevant data and/or provide (counter-)evidence. Facilitate the filing and processing of CS complaints or inquiries.

It may not have been possible to design the COCS to accommodate this requirement (hence the Medium Impact level) and, for future attention, the above recommendation links to transparency, disclosure of information and participation, which may already/also be covered elsewhere (e.g. under the VPA Annex IX on 'Public information and transparency measures').

In terms of monitoring data from CS, it is rather the other way around: CS/ communities are reportedly "desperate" to get data and expecting data from SGS/LVD (See in A4R Vol.2, 6.5.2 Implementation of social agreements with communities).

The review of the roles of the LVD may continue during the next audits, in particular through relevant sections of the VPA ANNEX II (Legality Assurance System of Liberia), the LVD development plans on a BOT basis, and the LVD SOPs.

7.3.8.2 Establishment of the Liberia Licensing Department (LLD)

Status: review still in progress until LLD is established, in A4R, Vol.1/Vol.2 (6.1.7.2).

When complete, it could be moved hereto for archiving.

7.3.8.3 Legality definition and related verification procedures

Ann. II, 4.1a defines the **Legality Definition** (LD) as consisting "of 11 **principles**, each of which is divided into a number of **indicators** representing the legal requirement that must be complied with. Each indicator is equipped with **verifiers** that are used for determining whether a *private-sector operator or government agency* complies with the legal requirements covered by the indicator concerned.

Appendix A to this Annex [LEGALITY DEFINITION, MATRIX AND VERIFICATION PROCEDURES] contains the **legality definition*** and outlines **verification procedures** to guide the responsible ministry, government agency and LVD in compliance assessment (**Ann. II, 4.1b**).

* Just as defined in the previous paragraph (about Ann. II, 4.1a) as consisting in a set of PIVs (Principles, Indicators and Verifiers).

The above-mentioned "verification procedures" introduced in Ann. II, 4.1b have been found to relate to the next sentence (**Ann. II, 4.1c**) whereby "This verification framework specifies the:

- **Objective**, to describe the *purpose of a verification procedure*;

- **Regulatory control**, to provide for *the normative and/or regulatory requirements and the responsibility for a particular indicator*;

- **Verification method**, *to provide for description and means of verification, which will consist of document review, field inspection, confirmation and/or consultation*;

- **Frequency**, *to define how often compliance with an indicator or certain aspects thereof must be assessed by the LVD".*

Interestingly "this verification framework" has also been found to exactly describe the structure and content of three sections that are included in the Legality matrix (LM), as provided in the VPA Ann. II, Appendix A (Section 2, Legality matrix), for each **Indicator**:

- "Verification Guidance/Procedure" (Objective, Regulatory control);
- "Verification Method"; and
- "Verification Frequency".

"More detailed procedures, including checklists, to assess compliance with the legality definition will be developed during implementation of the VPA" (**Ann. II, 4.1d,** consistent with **Ann. II, 1d11**). This justifies the use, as additional "audit criteria", of relevant sources of information developed since the VPA was signed, where new requirements were created as a result.

For further IA action, this review of the verification procedures related to the Legality definition and matrix will continue during the next audits, in particular through relevant sections of the VPA ANNEX II (Legality Assurance System of Liberia), the LVD development plans on a BOT basis, and the LVD SOPs.

7.3.8.4 Data management

Verification results will be recorded in a data management system… (**Ann.II, 4.2a**).

The data management system in question is understood to be referring:

- To the "chain of custody information system (COCIS)" (and vice-versa) that is introduced in the VPA by the Article **Ann. II, 4.2d** of the VPA Annex II; and therefore;
- Currently to LiberTrace, the software package being supplied by SGS to serve as COCIS for Liberia based on SGS's generic platform called "LegalTrace".

It remains to be assessed:

- What such "verification results" cover, with regards to the scope of the LM, whether all or part of it.

It also remained to be assessed:

- Whether the COCIS in fact "allows immediate checks on whether an operator complies with the legality definition" (**Ann. II, 4.2b**), and does so for the full verification scope of the LM (see below);
- Whether these checks cover the list of automatic checks prescribed by the VPA (Annex II - See Ann. II, 5.2f, 5.4.e, and possibly others).

As per **Ann. II, 4.2c**, it is "The LVD (that) will be in charge of data management, including updating records with the frequency set in the verification procedures".

"The [COCIS] contains certain data on legal compliance that will be collected to assess compliance with the legality definition along the product chain (**Ann. II, 4.2d**).

Furthermore, "these records are used as triggers to allow progress along the product chain, such as the start of harvesting operations or transfer of logs along the supply chain" (**Ann. II, 4.2e**). It also remained to be assessed whether and which records are in fact "blocking" (i.e. used as triggers to allow progress along the product chain) - See below.

Follow-up with SGS/LVD during Audit 3:

- Yes, LiberTrace "allows immediate checks on whether an operator complies with the legality definition" (as per **Ann. II, 4.2b**) in principle, through the T, L, and F markers (for Traceability, Legality, and Fiscality) for each log.
- Whether it does so for the full verification scope of the LM, or for which LM requirements: for those indicators that are verified.
- Through a sawmill it should work by batch of logs and only have Processed Wood from that batch.
- Whether/which records are in fact "blocking" (i.e. used as triggers to allow or block progress along the product chain, or other action, as per Ann. II, 4.2e): Yes, blocking for a License: all red Ts are checked, one by one. If a log is put aside for non-conformity, then according to the (10 Core FDA) regulation, it is fined or seized. Physically the log remains in the logyard until FDA has decided; nothing can be done with the log in LiberTrace. Example: aberrant diameter (log bigger than butt log or tree).
- Due to the late declaration (See also 6.4.14), no other examples of non-conformities can be known before the logyard (no way of checking diameter, no prohibited species, no access to T data on the field; can only be through accessing the server later on). But the logyard is a mandatory step (logs no longer going from forest directly to port as before).

As **Ann. II, 4.2f** envisages, "the COCIS (forms) part of the [broader] data management system [part of the COCS, part of the LAS] for verification purposes".

For the **Ann. II, 4.2g**, "The data management system should be developed to allow real-time exchanges of information so that any non-compliant timber detected during verification can be prevented from progressing, with later checks further down the supply chain".

Discussion of the corresponding criteria

- "The COCIS allows real-time exchanges of information": "real-time" is often an excessive requirement for forestry data management systems. In practice, data is more often uploaded or databases synchronized on a daily to a weekly basis. This is still due to allow the next criterion to be respected.
- "Any non-compliant timber detected during verification can be prevented from progressing": this is the same requirement as in Ann. II, 4.2e above and will be assessed under that Article.
- "With later checks further down the supply chain": this is assumed to mean following "real-time exchanges of information". Wood tracking systems do allow supply-chain integrity control from forest to port (with differed physical inspections or tallies and consistency checks at different stages in the chain) as long as there are unambiguous links to the relevant product (as looked at under 7.3.1.5 about VPA Art. 8,1e).

"The architecture and technical specifications for the data management system and detailed procedures for data management will be developed during implementation of the VPA" (**Ann. II, 4.2h**). This recalls that development of the LAS is "work in progress" during the entire LAS implementation phase, in accordance with **Ann. II, 1d11-12**.

For further IA action, this review will continue during the next audits, in particular through relevant sections of the VPA ANNEX II (Legality Assurance System of Liberia), the LVD development plans on a BOT basis, the functional specifications of LiberTrace and the LVD SOPs relative to data management.

See also: 6.2.1.3 'Review of the Manual of procedures for LVD staffs'.

7.3.8.5 Legality verification of operators working under an independent forest management certification scheme

Origin of this review: 6.1.7.6 (same heading) in the Audit 3 report. Considered temporarily completed, it was moved hereto for archiving.

Ann. II, 4.3a provides that "operators working under an independent certification scheme approved by the [GoL] can demonstrate legal compliance with the Liberian [LD] by providing the LVD and the LLD with a valid scheme certificate".

It remains to be assessed (but the IA so far has no indication of this):

- Whether any independent certification scheme has been approved yet by the GoL. As per **Ann. II, 4.3b**, prior to acceptance of a certification scheme, the GoL should carry out a consistency assessment to make sure that all the indicators of the LD are included in the certification scheme, compliance with them is systematically audited, and the entire certification process is found reliable; and only schemes which have passed the consistency assessment will be integrated into the LAS of Liberia;
- Whether any Operators are already working under such an approved independent certification scheme.

Note: Section 13.5 of the NFRL *inter alia* provides for the following:

f. The Authority shall, by Regulation, identify internationally accepted standards for certification of Timber that all Holders must satisfy.

Ann. II, 4.3b clarifies that, in keeping with Liberian legislation, all operators, including those with their own certified CoC systems, will still be subject to Liberia's national COCS; so these certified operators will be assumed to have complied with the rest of the requirements of the LD.

Regarding the legality of imports, **Ann. II, A1.2e**: "(e) Integration of **Independent Certification Schemes** into the LAS: discussion and agreement with stakeholders on the use of independent certification scheme(s) in Liberia and identification of the independent certification scheme(s) Liberia would recognize *for the purpose of establishing the legal origin of logs imported from non-VPA countries*;".

7.3.8.6 Institutional setting for effective VPA implementation, Multiple conflict of interest issues for the Auditing section of the LVD and within the FDA

Useful references:

- In the previous Audit 3 report: 7.3.7.3 (review considered completed in the previous report and therefore moved from 6.4.4 thereto);

- In the Audit 2 report: 3.4 (in 3, Main C&Rs), and 6.4.11;
- In the Audit 1 report: 2.1.8 (in 2.1 Main C&Rs, derived from 6.1.1.5 and 6.1.2.1, 2, themselves derived from the audit findings in 5.1.1.5 and 5.1.2.1).

As introduced in A3R 6.1.3, the Legality Verification Department (LVD) is the new government body designated by the VPA responsible for legality verification under the VPA Ann. II, 1d4 and established pursuant to Ann. II, 3.1a.

The IA's findings have mostly resulted from:

- The baseline review of the 'Institutional set-up of the LAS' in the Audit 2 report (6.1.7), particularly 'The Legality Verification Department (LVD)' in 6.1.7.1;
- The field audit of the 'Establishment and functioning of the LVD' reported in the Audit 2 report (6.2.1), particularly 'The LVD auditing section (as of April 2018)' under 6.2.1.4.

Conclusions from the Audit 1 report

The VPA introduced potential LVD/LVD and LVD/FDA conflicts of interests from and between the multiple roles of the Legality Verification Department (LVD) of the FDA: (i) COCIS management, (ii) CoC inspections, (iii) audits on the forest sector control checks (i.e. forest management, legality verification and other social and environmental checks) exercised by *other* government bodies (FDA CFD, EPA, MoL) and by *the same LVD* (for CoC inspections), and finally, (iv) approval of Export permit requests based on legal compliance across the board.

Potential internal LVD/LVD conflicts of interests

In the current structure, the *Auditing section of the LVD* therefore has a clear conflict of interest with the *Inspection section of the same LVD*:

- LVD intervenes at both Level 2 control [73] (on Operators, through CoC inspections) and Level 3 auditing (on other government bodies, including itself, through its CoC Inspection section); and
- Both sections are based in the same FDA head office and report to the same LVD Technical Manager who now (since SGS's effective handover on July 2018) heads the unit;
- LVD should *not* be responsible for both Level 2 control and Level 3 auditing. CoC inspections should be the responsibility of the Commercial Forestry Department of the FDA (CFD) as the IA understands was the case before. As such CFD should be a regular user of LiberTrace and should benefit from the same funding mechanism as LVD is benefitting from in order to fulfill its day-to-day role and responsibilities.

Potential LVD/FDA conflicts of interests

In the current structure, the *Auditing section of the LVD* also has a clear conflict of interest with the remainder of the FDA:

- The LVD Technical Manager reports to the Deputy Managing Director for Operations (DMDO) of the FDA, who also heads the Commercial and Community Forestry departments (CFD, CyFD), no longer higher up under the Managing Director of the FDA (MD); and

[73] As per the recommended definition of the different control levels in 6.1.7.3 (Verification and licensing framework), Vol.1, , where Level 4 is the inspectorate role played in the law enforcement chain by LED.

- The DMDO therefore concentrates supervision of conflicting Level 2 control (on Operators) and Level 3 auditing (on other government bodies, including other FDA Departments);
- The LVD Technical Manager should therefore report one level up, directly to the MD of the FDA, who will be responsible for ensuring that LVD findings concerning other FDA Level 2 control departments are addressed effectively and objectively.

Finally:

- The DMDO reports to the MD; and
- The MD in turn also oversees all other functions of the FDA[74]).

Such concentration of potentially conflicting roles in the same LVD, then in the DMDO's hands, then in the MD's hands, compromises impartiality in cases where for example LVD Auditors would need to contradict or raise non-conformances against the work of LVD CoC Inspectors, their colleagues, or other operational sections within the FDA.

The potential conflict of interest issue could also extend to the future Liberia Licensing Department (LLD) the entity that will finally be responsible for the issuance of the FLEGT licenses. Stakeholder feedback has indicated that LLD also needs to be truly independent of, specifically, the inspection leg of the LVD but also of the FDA altogether.

As first reported in A3R 6.4.12.1, until the LLD is created, CFD is said to be currently responsible for the final review and for formally issuing the Export Permits. This may in turn create confusion and further conflicts of interests since the corresponding decision-making level by the CFD seems to be below that of the Auditing section of the LVD having the powers to audit CFD (this creates an impossible circular resolution) and making recommendations for Export Permit issuance. Until the LLD is created, the final review and formal issuance of the Export Permits should be withdrawn from CFD and moved to a place above LVD in the FDA organogram or outside the FDA.

Without a clear division in responsibilities the whole LAS is compromised.

FDA comment to the Audit 2 report (28.11.2018): "*There is no conflict of interest between the LVD and other FDA departments, but there exist gaps in the commercial department and Law Enforcement due to budgetary constraint, and the lack of manpower to execute tasks assigned to enhance the work in a timely way. Additionally, the LVD and other FDA departments have separate roles, more clarity is needed on "the conflict of interest" as indicated by the Independent Auditors; the statement in the report is ambiguous.*"
IA response to FDA comment: The "gaps" issue is being followed-up on separately. Examples of conflict of interests and also examples of a lack of clear division of roles have been given in the report. The conflict of interest situation can be clarified on a case-by-case basis.

Follow-up during Audits 2 and 3

Further potential conflicts of interests have been identified:

[74] Reporting to the President directly, at same level as MFDP (June 19, 2017 meeting with SGS PM)

- LVD auditors being used as LVD CoC inspectors on a case-by-case basis to physically *assist with* the checking of export permit requirements and the resulting recommendation of export permits for issuance, instead of being independently *auditing* the work done by the CoC section and fulfilling their auditing functions for which they have been employed;

  FDA comment to the Audit 2 report (28.11.2018): "*LVD auditors are not being used as CoC inspectors, but rather, to authenticate the legality of documents sent in the LiberTrace.*"
  IA response to FDA comment: The IA maintains that LVD auditors are being used to inspect/ authenticate the legality of documents in LiberTrace against export permit requirements for each export permit (which is a CoC inspectors' task) on a case-by-case basis.

- Lack of independence of SGS, the External Service Provider (ESP) while establishing and building the capacity of the LVD, from being a contractor of the GoL, reporting to the FDA, and receiving its instructions from FDA Management sometimes against their opinion and recommendations. As such, SGS is not formally independent vis-à-vis its "client" (FDA) as part of its Service agreement with the GoL and not in a position to impose independent decisions to the rest of the FDA as part of its LVD mandate. As such SGS brings limited extra independence to the Auditing section of the LVD, particularly in relation to EP issuance. This undermines the expected added-value by an independent third-party as SGS sees itself and is recognized internationally.

  FDA comment to the Audit 2 report (28.11.2018): "*SGS is a service provider of the GoL, SGS ToR is to build, operate and transfer the LVD to the GoL. However, the capacity aspect is complete and while the operational function is nearing completion, and the transfer aspect has begun; however, the GoL would appreciate were you to further explain what is meant by SGS lack of independence.*"
  IA response to FDA comment: The IA team has been informed on multiple occasions that SGS indeed sees itself as a subcontractor to the FDA and thus needs to follow instructions from FDA Management and is not in a position to impose an independent opinion to FDA Management – clearly a lack of independence. Other evidence: except for the odd letter, SGS has not taken any corrective steps in not issuing export license, even though SGS has acknowledged that all export licenses in the country are not meeting legality requirements. Clearly SGS is not playing an independent decision-making role. This has been the situation until the expiry of SGS' contract in October 2018 and will be reviewed thereafter.

  For follow-up during Audit 4: Risk that the Conflict of Interest identified above for SGS (lack of independence from FDA) undermines SGS's power to challenge FDA decisions taken in regional / HQ offices as part of SGS's "monitoring" responsibilities under its new contract post October 2018 (in A3R 6.2.3.2).

In this context, allegations from stakeholders in Liberia of many instances of inappropriate behavior by officers within the FDA not following the right procedures in allocating certain rights or privileges or by not reporting infractions or not taking

due action from such reports, are allegations of possible cases of collusion with private interests (from a lack of independence and accountability) and corruption.

This may be exacerbated where government officers are not being allocated the means to work properly and operators are not being checked properly and are thus unable to demonstrate compliance (or "no-incompliance") where necessary to continue operating (see Export permit procedure for example), as it has been found.

Due to the difficulty of obtaining hard and concrete evidence of such facts, though, the alleged issue of widespread rampant corruption has not been substantiated in this audit and need to be followed up on during the next audits. From stakeholder feedback, the perception remains that corruption is rife in the forestry sector of Liberia not only among FDA staff but also private sector operators and officers and members of communities. Private sector operators have admitted paying bribes and that this represents a certain "annual budget". The recent Global Witness report (Holding the line, Liberia logging accountability report - Feb. 2017) points to a high level of questionable conduct in the sector.

This also raises questions about transparency and accountability in the management of the institution in the absence of a supervisory body, a role which the IA has now analyzed is not the role that the NFRL assigned to the Forest Management Advisory Committee (FMAC) (See Vol.1, 6.1.2.12, 7.3.1.10).

Follow-up during Audit 4

The 'LFSP second report' titled 'Compliance Audit Report on ICC/Forest Venture of FMC-K and LTTC/CFMA-4' (September 17, 2018) completed by LED provides, annexed to the report, a copy of the cover Memorandum sent to the DMDO (Note: although, again, LED is supposed to report to the MD directly). In that case at least, therefore, the DMDO in practice (and in contradiction with the organogram) also concentrates the reports issued by the LED.

Main conclusions (updated): The capacity of the LAS to "ensure that timber of illegal or unknown origin does not enter the supply chain" (as per the VPA Art. 8,1e) is undermined by **conflicts of interests** for the Auditing section of the LVD, and within the FDA, that were at least partly introduced by the VPA:

- From and between the multiple roles of the LVD: (i) COCIS management, (ii) CoC inspections, (iii) audits on the forest sector control checks exercised by other government bodies and by *the same LVD* (for CoC inspections*), and (iv) approval of Export permit requests based on broad legal compliance;
  * This is being exacerbated where LVD auditors are used as LVD CoC inspectors to physically *assist with* the checking of requirements for export permit issuance, which adds to the internal mixing of roles;
- Between the Auditing section of the LVD and the remainder of the FDA, particularly the Commercial and Community Forestry Departments and the Law Enforcement Division, due to the confusion of roles and concentration of conflicting roles in the same hands at different levels within FDA Management;
- Due to the lack of formal independence of SGS, the External Service Provider while building the capacity of the LVD, or again as part of SGS's monitoring responsibilities after October 2018, from the management of the FDA.

The lack of independence also potentially extends to the future Liberia Licensing Department (LLD).

Conflicts of interests in any government institution are an important corruption factor. The perception of widespread rampant corruption in this context is supported by allegations from stakeholders in Liberia, that corruption is rife in the forestry sector not only among FDA staff but also private sector operators and officers and members of communities. The Global Witness report 'Holding the line' (Feb. 2017) is one indication of the level of questionable conduct in the sector.

This may be exacerbated where government inspectors are unable to operate because of the lack of resources. As a result, government control is dysfunctional and operators are not being checked properly but must still be able to demonstrate compliance where necessary to support their operations.

The potentiality of conflicting roles is aggravated by the lack of a clear allocation of roles and responsibilities, as has now been reported in several sections in the Audit 3 report, notably for the Commercial Forestry Department (CFD) and its divisions, the Community Forestry Department (CyFD), the Law enforcement division (LED), the LVD (above), and the Environment Protection Agency (EPA).

Such confusion creates overlaps and duplications of efforts, while loopholes may also exist at the same time, and conflicts possibly resulting in mutual neutralization among those different departments. Added to the lack of resources, and to the lack of efficient follow-up by the hierarchy to the inspection reports coming from the field, broad demotivation (among usually passionate foresters) and a loss of the sense of responsibility and accountability across the institution are apparent.

FDA comment to the Audit 2 report (28.11.2018): "The CoC processes are followed by the LVD in performing its tasks. Also, all GoL agencies and institutions that are required to monitor the legality process play their part at a certain stage and even participate at the exit point of products."
IA response to FDA comment: The narrative part of the FDA comment that provided extracts from the IA report actually mixed up the Main conclusion (conflicts of interests' statement) and the Main recommendation (three roles to be separated out). The subsequent FDA response is acknowledged. It denies the conflict of interest issue and as such relates to the first part of Point C above where it has been addressed.

The review continues in the Volume 1 of this Audit 4 report (7.3.7.3, same heading), from follow-up under Audit 4.

7.3.9 Annex II - Implementation of Legality verification

This review was considered completed in the Audit 3 report (6.1.8) and was therefore moved hereto for archiving.

Reminder of audit terminology:

- The **audit criteria** are the set of policies, procedures or requirements used as a reference against which audit evidence is compared;
- **Audit evidence** includes the records, statements of fact or other information (qualitative or quantitative) that are relevant to the audit criteria and verifiable;
- The **audit findings** are the results of the evaluation of the collected audit evidence against the audit criteria. They indicate conformity or non-conformity.

> They can lead to the identification of opportunities for improvement or recording good practices. If the audit criteria are selected from legal or other requirements, the audit finding is termed compliance or non-compliance. (ISO Guide 19011, 3.2-3.4).

Identification of the LAS "audit criteria" to be used in this assessment could include the following sources and corresponding requirements:

- The requirements included in the VPA and its annexes, as backed by relevant laws & regulations and (LVD, other) SOPs;
- Through the analysis of project design, the services and expected outputs specified:
  - Before contracting, in the ToR for the selection of the External Service Provider (ESP) as mentioned in 6.1.7.1 for SGS;
  - As part of the contracting of the ESP – where available – the contractual milestones, deliverables and schedules included in the ESP's contract, possibly including its technical proposal, related to the building of the LAS;
  - As part of project development and implementation after contracting, agreed subsequent plans and schedules like e.g. LVD development and handover plans on a BOT basis, functional specs of LiberTrace, if relevant and available sources? (possibly taking the Forward Planner as one of the relevant information sources);
  - In progress reports reflecting commitments, including for LVD handover.

The idea for future work in Liberia regarding LV is to figure out how to build a set of criteria by expanding the Legality matrix with these other criteria (and to either do it or make it a recommendation to the JIC as part of the review and updating of the LM). The IA would be able to use the new set of criteria as a fully comprehensive checklist for future assessments of "the effectiveness of the timber Legality Assurance System (LAS) being implemented in Liberia under the EU-Liberia FLEGT [VPA]" as per the IA mandate.

7.3.10 Operator's compliance with Legality matrix requirements, assessed against the SD-01 and CFHP audit checklists

7.3.10.1 Auditing against the SGS/LVD Audit Checklist SD 01 to assess Operator's compliance

Useful references:

- In the previous Audit 3 report: 6.4.5, 7.3.8.1;
- In the Audit 2 report: 6.4.7.1;
- In the Audit 1 report: 5.2.2, 6.2.2.1.

As clarified after Audit 1,

- This analysis conducted during Audit 1 was more about:
  - Assessing the *Operator's level of compliance* against the SD-01 Checklist; and then;
  - Comparing it with the *FDA reporting of such Operator's compliance*, which during Audit 1 was found to be inexistent.

- During Audit 2 the focus would be more on whether LAS implementing bodies are doing what they are required to do as specified in the VPA and its Legality matrix (LM) in particular.

The rest of this section is still a (revised) copy from the Audit 1 report (Auditing against the SGS/LVD Audit Checklist SD 01) as the report is being restructured.

The IA's "SD-01+" audit checklist was used by the IA to assess the compliance of field operations with the requirements of the Legality matrix in the VPA. It has been slightly adapted from the original SGS/LVD SD-01 checklist, which was prepared for the auditing section of the LVD to conduct audits on operators in Liberia and is also derived from the Legality matrix (and cross-referenced with the LM's Principles, Indicators and Verifiers). The IA's checklist is thus a relevant tool to ensure consistency in the work of the IA.

It provides an "**Objective'**, a justification for **'Regulatory Control'**, and a '**Verification Method'** for each Indicator and, for each Verifier, it collects the following information:

- Declaring entity;
- Audited entity;
- Level;
- Contract or Permit type;
- Verification means;
- Document expiry;
- Verification frequency;
- Guidance notes;
- Legality references.

The detailed '**Audit Checklist and Report'** as completed for each Verifier with a '**Public statement**' of the assessment (Compliant / Non-compliant / Not assessed / Not applicable), the '**Risk Class**', **Audit evidence**, and a '**Recommendation**' - where applies -, was provided as an annex to the Audit 1 report (Appendix 7.4 'SD 01-01 Audit Checklist and report 2018.01.27'), and again as the Annex 7.15 to the Audit 3 report, in a separate report because it contained 92 pages.

Here is a representation of the header:

Project number:	**001**	**Start date:** 20/11/2017	**End date:** 31/12/2017
Contract name:	FMC XXX Sub-contractor: XXX		
Name and address of company (based on contract)	XXX		
Company contact person name and cell number:	XXX XXX		
Name of person representing auditee (FDA):	Regional Manager – based in Buchanan		
Principles sampled	All principles, but certain sections of the checklist were not covered during this audit		
Name and cell number of Team leader:	Michal Brink, IA Audit team leader +27 82 447 9477		
Team members	Antoine de La Rochefordiere – IA Team leader James Kollie - Observer		

Summary of findings

The logging contractor's operations of FMC "X" (names of auditees are kept confidential in this report) were included in the audit sample.

The selected FMC represents more than 50% of all log exports in Liberia. Furthermore, evidence gained from interviews with FDA staff that accompanied the IA team on the field visit confirmed that the practices of FMC X are representative of the modus operandi of FDA throughout Region 3.

Although there was a definite emphasis on the high-risk Verifiers in the checklist, the audit team managed to complete the full checklist due to the marginal time that was required extra to achieve this.

It is recalled that the level of risk of all issues related to compliance to the LM was developed as part of the Inception mission of the IA. It has been added to each Verifier in this report (See "Risk Class: 4" for example, for VERIFIER 1.1.1, on a scale from 0 to 12. High-risk Verifiers (i.e. Risk Class scored between 6 and 12) are marked as red text in the table below). High-risk issues are thus clearly defined and manageable by all role players in the Liberian forestry sector.

The results (from manual calculation) showed the following among the Verifiers of the checklist:

Compliant ✓	*Non-compliant* ✗	*Not applicable* ⛔	*Not checked* ?	*Total*
12	**94**	14	11	131
9%	**72%**	11%	9%	100%

When considering only the 'Compliant' and 'Non-compliant' criteria (in other words ignoring the 'Not applicable' and 'Not checked' criteria) a more accurate view is established of compliance levels, as reflected in the following table:

Compliant ✓	*Non-compliant* ✗	*Total*
12	**94**	104
12%	**90%**	100%

Conclusion: The overall non-compliance level is very significant at 90%. The results in terms of the level of compliance, if related only to the high-risk Verifiers, show that 61 out of the 66 were non-compliant i.e. 92%. This confirms the overall results of a very high non-compliance level for the audited entity, a situation that the responsible government bodies and agencies in charge of controlling were evidently not picking up.

The conclusions and recommendations from this assessment have been combined for discussion in one place with those from the CFHP checklist auditing (See the one-after-next section)."

In summary (from A1R 6.2.2.1):

The IA audit team completed the full LVD audit checklist to assess the compliance of field operations in an area of FMC X with the requirements of the VPA Legality matrix in the VPA and assess the efficiency of government control of the same.

The selected FMC is a relevant sample for this Audit as it represents more than 50% of all log exports in Liberia and it was also confirmed that the practices of FMC X are representative of the modus operandi of FDA throughout Region 3.

The detailed results for all Verifiers (Compliant / Non-compliant / Not assessed / Not applicable, Risk Class, Audit evidence, Recommendation) are provided in the Appendix 7.16 to this Audit 3 report, with the high-risk Verifiers highlighted in the table.

The results showed a very significant non-compliance level of 90% among the 104 applicable Verifiers of the checklist that were checked (i.e. 81% of all Verifiers) and up to 92% when considering only the 66 high-risk Verifiers.

7.3.10.2 Auditing against the CFHP Checklist to assess Operator's compliance

Useful references:

- In the previous Audit 3 report: 6.4.5, 7.3.8.2;
- In the Audit 2 report: 6.4.7.2;
- In the Audit 1 report: 5.2.3, 6.2.2.2.

As clarified after Audit 1,

- The analysis conducted during Audit 1 was more about:
  - Assessing the *Operator's level of compliance* against the CFHP Checklist, this time; and then;
  - Comparing it with the *FDA reporting of such Operator's compliance*, which again during Audit 1 was found to be inexistent.
- During Audit 2 the focus would be more on whether LAS implementing bodies are doing what they are required to do as specified in the VPA and its Legality matrix (LM) in particular. Chap. 6.4.9 'LVD auditing against the CFHP Checklist' (7.3.11.3 in this Audit 3 report) made a contribution towards that goal (inasmuch as the CFHP Checklist is only a portion of what the whole LM requires – See below on the difference between the two checklists).

The rest of this section is still a (revised) copy from the Audit 1 report (5.2.3, Auditing against the CFHP Checklist) as the report is being restructured.

The IA's "CFHP+" checklist is an adaptation from the original checklist that has been derived from the CFHP under the VPASU project to enable government departments to audit compliance with the Code. It is a non-exhaustive list of applicable mandatory requirements; any forest operation must also adhere to the other applicable laws and regulations (including but not limited to the National Forestry Reform Law of 2006, its implementing regulations, the Environmental Protection and Management Law of 2003, and the Community Rights Law of 2009) that are reflected in the Legality matrix (LM).

But the LM itself also refers to this document and requires compliance at various levels to the content of the Code. The two tables combined are thus a reflection of the Definition of legality in the Liberia VPA and of all applicable laws and regulations.

The detailed '**Audit Checklist and Report'** was provided and described in a separate report that was again annexed to the Audit 3 report (7.16 'CFHP Checklist 2018.02.02').

General information

Holder Name: XXX

Names of auditors: Michal Brink and Antoine de La Rochefordiere

Date of inspection:

- Start date: 25 November 2017;
- End date: 29 November 2017.

Type of forest resource license: FMC

Type of operation: Planning / Ongoing / Post-harvest

Sampling

Planning: Inspect a sample of all blocks prior to commencement of harvesting

Ongoing: Inspect a sample of all blocks where operations are taking place

Post-harvest: Inspect 100% of all compartments to verify that plans have been fully concluded in the field before signing-off blocks

All Verifiers are high-risk Verifiers unless marked with the phrase "Low risk". This is based on the CFHP risk assessment that was completed by the IA as part of the Inception phase of the Independent audit. Many low-risk issues were also covered during the assessment as it was only marginally more time consuming capturing this than only focusing on the high-risk Verifiers. Besides, only a minority (54) of the 173 Verifiers (31%) is low risk.

General Comments

This report must be read in conjunction with the Legality matrix checklist SD 01 as the Legality matrix requires compliance with the Liberian FCHP.

The logging contractor's operations of FMC "X" were included in the audit sample.

The results show the following:

Compliant ✓	*Non-compliant* ✗	*Not applicable* ⛔	*Not checked* ?	*Total*
15	**87**	16	55	173
9%	**50%**	9%	32%	100%

When considering the 'Compliant' and 'Non-compliant' criteria (in other words ignoring the 'Not applicable' and 'Not checked' criteria) for only the high-risk Verifiers in the CFHPs, there is a significant increase in the level of non-compliance, as reflected in the following table:

Compliant ✓	*Non-compliant* ✗	*Total*
4	**76**	80
5%	**95%**	100%

Conclusion: From auditing against the CFHP Checklist, the Non-compliance level is thus very significant at 95% among the 80 high-risk Verifiers of the checklist that were checked.

The conclusions and recommendations from this assessment have been combined for discussion in one place with those from the SD 01 Checklist auditing (See the next section).

In summary (from A1R 6.2.2.2):

The IA audit team used the same audit checklist as the government departments in charge do to assess the compliance of field operations in the same area of FMC X with the requirements of the Liberian Code of Forest Harvesting Practices (CFHP).

Because the Legality matrix requires compliance at various levels to the content of the Code, these two checklists (SD 01, CFHP) combined are thus a reflection of the VPA Definition of legality and of applicable laws and regulations in Liberia.

The results were provided in the Appendix 7.16 to the Audit 3 report ('CFHP Checklist 2018.02.02'). All Verifiers are High risk unless marked "Low risk" (54 of the 173 Verifiers). The report must be read in conjunction with the LM checklist SD 01 (See previous section).

The results again showed a very significant non-compliance level of 95% among the 80 high-risk Verifiers that were checked (i.e. 46% of all Verifiers).

7.3.10.3 Combined conclusions and recommendations from both assessments (against SD 01-01 and CFHP checklists)

Useful references:

- In the previous Audit 3 report: 6.4.5, 7.3.8.3;
- In the Audit 2 report: 6.4.7.3;
- In the Audit 1 report: 5.2.3, 6.2.2.3.

Conclusions (in the Audit 1 report):

At respectively 92% and 95% non-compliance to the high-risk requirements of the Legality matrix and the CFHP, for the audited entity being considered a representative sample for the whole Region 3 of FDA, and in the absence of any comparable inspection report issued by the FDA (See 6.4.6), log exports from Region 3: (1) are clearly not being checked by the responsible government bodies and agencies as meeting VPA requirements; and (2) would not allow FLEGT Licenses to be issued.

The LM represents the laws, regulations and ministerial procedures of good forest governance in the Republic of Liberia. From the LM, the FDA has provided the JIC with a list of key applicable legal requirements for the issuance of timber export permits[75].

[75] Requirements-for-export-permit-under-current-regime.pdf

From the above situation, and from further crossing the requirements of the above checklists with these "Current regime" requirements for export permits, the audit clearly showed gaps between the export permitting requirements and compliance by the field operations. It can be deducted that (3) current log exports in Region 3 of FDA are receiving export permits without complying with the list of official requirements in Liberia[76] that the FDA has provided the JIC with (as encapsulated in the Legality matrix) and (4) are therefore technically being exported illegally and, what's more, under the cover of an official permit.

Recommendations (in the Audit 1 report, now outdated):

Based on the above levels of non-compliance that were found during the audits relating to the Legality matrix and the CFHP it was (initially) recommended (in the Audit 1 report) that all log export from Region 3 (and possibly all Regions of Liberia) be suspended until such time as:

(i) All high-risk non-conformances have been addressed by the FDA and other government bodies responsible for such high-risk Verifiers and by the relevant private operators; and
(ii) Log export permits can be legitimately issued in line with the requirements listed by the FDA in this regard.

On that basis, the IA (initially) raised the following **ISSUE** (Ref. **HII 4**) in the IA Progress DB, under Issuance of Export permits:

- Identified ISSUE description: Log exports not properly checked, not complying w/ all min. requirements for EP, still being issued EPs;
- Recommendation, or status of IA record: Suspend all exports, or implement clear enforcement plan.

Main conclusion (updated):

The levels of non-compliance that were found during Audit 1 relating to the Legality matrix and the CFHP clearly show that log exports from Region 3 (and likely all Regions of Liberia) would not allow FLEGT Licenses to be issued.

Other preliminary conclusions from Audit 1 required further research to determine:

- The extent to which log exports from the FDA Region 3 and other Regions are being properly checked by the responsible government bodies and agencies (it was apparently not the case during Audit 1 in the field but this was not the focus of the audit). FDA inspections are the subject of Chap. 6.4.7 in this report (Vol.2);
- Whether or not current log exports in Region 3 of FDA are receiving export permits without complying with the list of official requirements in Liberia, and are therefore technically being exported illegally. The current issuance of Export permits is the subject of a broad review under Section 7.5 in this report (Vol.2).

Recommendations (updated):

Recommendation to the JIC is for the adoption of a plan to raise compliance levels (through stepwise enforcement of the requirements) from A. the "Current regime" requirements for export permit, to B. VPA/LM requirements to allow FLEGT Licenses to be issued (before the VPA can be declared operational).

To achieve this, there is a need to identify the gaps from the "Current regime" requirements for export permit to VPA/LM requirements.

The **ISSUE** (Ref. **HII 4**) in the IA Progress DB was consequently changed as follows, under 'Operator's compliance with Legality matrix requirements':

[76] 'Requirements for Export Permit under current Regime' (www.fda.gov.lr/information/laws/#115-export-permits-species-list-and-prices)

ISSUE HII 4
Impact level: High
Identified ISSUE: Current log exports would not allow FLEGT Licenses to be issued
Recommendations: A gap analysis of requirements between the two standards; and a plan to raise compliance levels for export, from "Current regime" to VPA/LM requirements (before Licensing can start).

This also links to the Legality matrix enforcement plan considered in 7.4.12 and to the gaps in the current issuance of Export permits analyzed in 7.5.

The IA raised a separate issue under 7.5.2.8 (ref. HII 18) about current log exports receiving export permits without complying with the list of official requirements and therefore technically being exported illegally.

Whether the SD 01-01 and CFHP checklists that are currently used by SGS/LVD are accurate tools in the first place, is a question (initially mentioned in 4.3.2) that will require a more systematic review and assessment under that specific angle, after the IA Audit team leader felt the need to slightly adapt the original SD-01 and CFHP checklists from SGS/LVD as explained in 7.3.10.1 and 7.3.10.2 above (Note: some Verifiers have been found "not applicable', which would affect the quality of the checklist unless it was clearly specified).

The above questions shall be extended to two other checklists:

- The LVD checklist for EP issuance against the "Current regime" requirements that has been reviewed in 7.3.11.3 (and found to be "incomplete", reason why the IA also developed its own checklist); and
- The FDA (CyFD) Nine-Step Handbook and checklist (See 6.4.1.2).

Whether SGS/LVD auditors are then correctly using the combined SD 01-01 and CFHP checklists is another question that is reviewed under 7.3.10.3 in this report.

FDA/IAWG response to the Main R&C in the Audit 3 report

Issue HII 4: Current log exports would not allow FLEGT Licenses issued

The FDA recongnizes that the forest resource licence holders (FMC, CFMA, TSC) are not fully implementing the CFHP and guidelines. To improve enforcement, the FDA is requesting the GoL to increase resources to address these gaps. Activation of additional legality matrix verifiers is neccesary for contract holders to submit documentation that prove conpliance of what is currently being reported.

Mitigation Measure: FDA to talk with the Lesgislature and the Ministry of Finance for budgetary allocation

Responsible Department: Commercial Dept., LVD, Community & VPA Secretariat, with the support of VPA SU-2

Time Frame: Before the 9th JIC in 2020

Reference: Updated Legality Matrix

Remarks: The Updated Legality Matrix approved in 8th JIC and tested before the 9th JIC

IA review of FDA/IAWG response:

- Recognition by the FDA "*that the forest resource license holders (FMC, CFMA, TSC) are not fully implementing the CFHP and guidelines*" actually concerns Issue HII 18 (lack of compliance with current requirements).
- FDA's claim that "*To improve enforcement, the FDA is requesting the GoL to increase resources to address these gaps*" and Mitigation Measure actually relate mostly to Issue HII 29 (lack of resources).
- The next FDA's statement has two parts. That the "*Activation of additional LM verifiers is necessary for contract holders to submit documentation that prove compliance…"* is relevant to the IA's recommendation of a plan to raise EP requirements from "Current regime" to VPA/LM). The other part ("*compliance… of what is currently being reported*") seems to suggest that contract holders are already reporting against a higher level of requirements? An "*Updated Legality Matrix, approved in 8th JIC and tested before the 9th JIC*" refers to the necessary updating of the LM which is a different issue and will actually increase the current gap by "raising the bar" further.
- Issue HII 4 remains open.

7.3.11 Annex II – Implementation of the Chain of Custody System

7.3.11.1 Standard operating procedures (SOPs)

Section 5.1 of the VPA Annex II deals with 'Standard operating procedures'.

Requirement: "A set of standard operating procedures (SOP) has been developed to lay down (a) how forest companies control their supply chains and (b) how these company activities are verified with the help of the COCS" (**Ann. II,5.1a**).

To date, the IA is aware of the following existing SOPs (See 6.4.1.2, Legal framework):

- The **Manuals of Procedures for LVD staffs** and **for Forestry Operators** (July 2016, SGS, Project ref. PO 6380) – more commonly known as 'Liberia COCS Standard Operating Procedures' (COCS SOPs); last updated July 2018 pending official approval; and of
- The '**Compliance Procedures to the VPA Legality Matrix Verifiers**' developed by the VPASU (pending JIC approval), a "Manual containing work instructions/ operating procedures that apply to whichever agency/ organization is responsible for producing the documents/ inputs that validate the relevant verifiers".
  It complements the above-mentioned COCS SOPs. As such it will be the *basis for the Legality Verification of the responsible government bodies designated in the LM* and *ultimately by the Auditing section of the LVD regarding the "Legality" pillar of the LAS*. "The Compliance Procedures aim to explain the step-wise process to comply with each Verifier for each of the Principles of the VPA Legality Matrix. The process includes who is responsible for the execution of each step, who approves, document type with examples attached, and Description. Further explanations are offered regarding Non-Compliance, Violations, Legal References and Guidance Notes".

These manuals are now also complemented by the 'the LiberTrace User's Guide'.

The provisions of the VPA **Ann. II,5.1a** include that:

(a) “a general standard operating procedure 01 (GSOP 01) provides a general description of how control and verification activities for timber and wood products sourced from TSCs, FMCs and PUPs are conducted”;

The COCS SOPs do not, or no longer contain any such “GSOP(s)” and no SOP provides any such “general description of the control and verification activities”. For further attention: IA to consider registering a (minor to medium) issue).

(b) “details of each activity are presented in a number of SOPs”; and [(c) follows further below]

The SGS/LVD COCS SOPs are contained in two sets of documents – one for use by the LVD staff and one for use by the forestry operators

The IA compared the respective tables of content of the two Manuals of Procedures, for LVD staff and for operators (See **Annex 8.3**). The comparison essentially shows the verification steps that the LVD has to implement upon the operators’ declarations or requests. It shows that the same steps have different numbers in the two sets (for example, the ‘FELLING/ TREE DATA REGISTRATION’ SOP is no. 5 for Operators and no. 11 for LVD staff).

The scope of the COCS SOPs includes CoC (traceability) aspects but also: issuance of Export permit, issuance of Certificate of origin, Legality verification, Fee payment (“fiscality”) and the resulting FLEGT Licensing. Issuance of Export permit is based on exports’ overall compliance confirmation. Legality verification is detailed at Verifier level.

The Manual in its Introduction in fact says ”The manual compiles a set of 35 Standard Operating Procedures (SOP) and their Work Instructions (WI) to implement the Liberian:

- Timber Chain of Custody Information System
- Legality Verification System
- FLEGT Licensing System”.

Therefore, the scope of the current LVD SOPs is not limited to CoC (Traceability) aspects but also covers Legality and Fiscality in detail (not by borrowing the result of a separate process), corresponding to the full scope LVD functions. In that regard, it goes beyond the sole COCS (as herein defined in the VPA, to also embrace Legality and Fiscality); and the denomination SGS/LVD “COCS” SOPs is misleading.

See the results of related field audits under A3R, 6.2.3.3 (Review of the Manual of procedures for LVD staffs - now moved to under 7.4.6.1 (Performance of the LVD, SOPs) - and 7.4.6.3 (Documentation used by the Auditing section of the LVD).

Investigation in progress (further IA action):

- Identify any existing reconciliation of the COCS SOPs with the LM (or any expanded set of criteria), or consider recommending such reconciliation, regarding which SOPs might be felt missing; and report any gaps.
- Figure out to what extent the “VPASU SOPs” partly overlap the SGS/LVD COCS SOPs, and duplicate, confirm or contradict the latter. In that regard, the next paragraphs might need to be updated to reflect the update of the VPASU SOPs from V1.1 to V2.2.

The division of the LM scope between the two sets of procedures above (LVD, VPASU) has been said to reflect the division between the respective work plans of the two support service providers, SGS (LVD) and DAI (VPASU).

- The Compliance Procedures (prepared by VPA SU) cover the Verifiers for:
  - Principle 1 (Legal Existence);
  - Principle 2 (Forest Allocation);
  - Principle 3 (Social Obligations);
  - Principle 4, only Verifiers for Indicator 4.1 (Annual Harvesting Certificate, Annual Operational Plan, Forest Management Plan);
  - Principle 5 (Environmental Obligations);
  - Principle 8 (Worker Rights, Health Safety and Welfare) and;
  - Principle 11 (Transparency and General Disclosure), and
  - Establishes and records who is responsible for the proper distribution of the verification documents, the filing and administration.
- The rest of the LM Principles and Indicators is covered under the LVD COCS SOPs developed by SGS for FDA (see above):
  - Principle 4, Indicator 4.2 Verifiers (Annual Blocks, Compartment and Annual Coupe, Felled Trees Data Verification, Annual Compliance Audit Report of FDA);
  - Principle 6 (Timber Transportation and Traceability);
  - Principle 7 (Transformation and Timber Processing);
  - Principle 9 (Taxes, Fees and Other Payments) and;
  - Principle 10 (Export, Processing and Trade Requirements).
- For SGS, there admittedly were risks of loopholes in the LAS implementation process between SGS and VPASU:
  - Principles 6 and 7 are the CoC principles under SGS;
  - For the other principles (for ex. EPA inputs), SGS must receive inputs from the relevant GoL depts. A potential problem is determining who is responsible for building capacity, systems and processes, and for the use of checklists, or ensuring someone is. Technical assistance (TA) may be lacking in some areas, as the extent of its assignment to VPASU is unclear. However TA is indispensable, the VPA process is demanding, the capacity is often not there and will not be self-generated (there are no means for it).

For further consideration, it is suggested that the two (LVD/VPASU) sets of procedures could be assembled in one single document covering the entire scope of the LM PV&Is.

As a result of Audit 2, the IA registered an **ISSUE** (ref. **HII 14** in the IA Progress DB) about such likely **loopholes in the LAS implementation process** because of the division of the LM scope between the different external support service providers (ESPs). More specifically, this concerned the respective work plans of the two main ESPs, SGS (LVD) and DAI (VPASU), and the two sets of procedures these ESPs have developed. It has now been updated as follows:

ISSUE HII 14 (updated)
Impact level: High
Identified ISSUE: Loopholes previously existed in LAS implementation between different external support service providers (ESPs)

Recommendation(s): Ensure comprehensive coverage of scope by the long-term technical assistance to the LAS implementation process (VPA-SU2); assemble all procedures in one single document.

(c) "the GSOPs and SOPs will be amended to reflect any changes in the control and verification activities, including introduction of new sources of timber in the COCS".

As an illustration of successive amendments, the July 2016 version of the COC SOP Manual, in its Introduction, specifies "The SOPs contained in the manual have been defined further to the review of the first set of SOPs delivered by SGS in February 2014. The first set was itself created upon a revision of the pre-existing LiberFor SOPs and the preparation of missing SOPs. (…)".

The IA notes: 1) that the Legality matrix refers to COCS SOPs (for example, Principle 1, Indicator 1.1: "(…) COCS SOP (4) and any update"); and 2) that these references might need to be updated to reflect the current SOP numbers (in case the "old" SOPs have been or would be replaced and renumbered).

Is that the case? Mentions found in the SOPs for LVD staff, indeed supposedly* refer to the "old" LiberFor SOPs (as per the references in the "Associated Documents" like e.g. for 1 Operator Registration: "Liberfor SOP 04")[77]:

Table 9: Cross-referencing of "new" vs. "old" SOPS

Section in new SOPs, Associated Documents	Ref. in supposedly* "old" SOPs
1 Operator Registration	SOP 04
3 Regulatory Reference Data Update	SOP 18
4 Annual Coupe Registration	SOP 09&10
9 Inventory Operations or stock survey Registration	SOP 07
10 Inventory or stock survey Verification	SOP 08
11 Felling/ Tree data Registration	SOP 10&11
13 Cross-cutting/ Log data Registration	SOP 13
14 Transport Declaration	SOP 16
15 Transport (Checkpoint) Inspection	SOP 17
16 Change of Ownership Declaration	SOP 06A & SOP 32
20 Sawmill Processing Registration	SOP 15 & 30
22 Export Permit Request	SOP 19
23 Export Permit Verification	SOP 20
24 Export Permit Issuance	SOP 20 & 21

* For further attention: SGS/LVD to confirm

[77] However the "Associated Documents" to the Work Instruction also for 1 Operator Registration refer to: "P3-LVD-COC-10-EXT", the "Associated Documents" to an SOP 2 Operator Registration Validation refer to an "SOP Operator Registration P3-LVD-COC-02", etc. which apparently refers to a whole other set of procedures. For further attention: this would deserve some explanation and guidance.

The IA assumes that each Chapter in the manual is an SOP.

Recommendation (updated from A1R, 6.3): SGS/LVD should clarify the SOP numbering whether (i) "23.1 Standard Operating Procedure" can be referred to as "SOP 23", and renumber the SOPs if that is the case, and (ii) "23.1 Standard Operating Procedure (SOP 20)" means that SOP 23 replaces the former Liberfor SOP 20 or otherwise. With the new SOP numbers, two tables of correspondence should be provided, one for the procedures and the other one for the work instructions, with the corresponding numbers in the LiberFor procedures and else.

FDA comment to the Audit 2 report (28.11.2018): "All SOPs has been updated and numbered in line with the previous SOPs."
IA response to FDA comment: The FDA addresses the second part of the IA's recommendation and contradicts the objective evidence of two different numbers between the new SOP (23) and a presumably older SOP (20) unless there is another explanation. The point will be followed-up on and re-assessed as part of a further review of the SOPs.

The IA has now registered a new **ISSUE** (ref. **MII 16** in the IA Progress DB) about the confusing numbering of LVD SOPs for future follow-up:

ISSUE MII 16
Impact level: Medium
Identified ISSUE: The numbering of current LVD SOPs is confusing in itself (Chapters vs. SOPs), and between the two sets (same steps have different numbers for Operators and for LVD staff), and also with reference to previous sets of SOPs
Recommendation(s): Renumber current LVD SOPs as per the Chapters in the Manual, equally between the two sets (Operators, LVD staff), and provide tables of correspondence between the new and the old procedures and work instructions.

Under **Ann. II,5.1b** it was foreseen that "Control and verification of timber from the following sources will be developed within two years of signature of the VPA" (and supposedly introduced in the COCS as per (c) above):

(a) forests regulated by the Community Rights Law;

(b) chainsaw logging operations;

(c) imported timber;

(d) timber in transit;

(e) confiscated timber.

Development of the following regulations is an on-going process that is being monitored under 6.4.1.1. The development of related verification procedures (i.e. SOPs) for inclusion into the COCS is also being monitored under 6.4.1.2.

Ann. II,5.1c is purely informative ("The next few sections and Appendix B describe the key control points and guiding principles of the COCS").

For further attention: there is a need to understand whether and to what extent all these guiding principles have been implemented accordingly and accurately for all control points in the current COCS SOPs. The comparison could be done in a table like this one:

Ann. II,5 requirements on COCS	Reference in the LM (any difference?)	Reference in the SOPs (any difference?)
TBC… (Start entering the key control points as per 6.1.9.2 to 6.1.9.12 headings below; then the Appendix B guiding principles? Matching requirements under Ann. II, 5.2a to 12,c?)		

Further IA action: Continue assessing the SOPs as initiated in 7.4.6.3 (Documentation used by the Auditing section of the LVD)[78].

Completed parts of this review were moved to under 7.4.6.1 (Performance of the LVD, SOPs) in this A4R, Vol.2.

7.3.11.2 Pre-harvest checks

Section 5.2 of the VPA Annex II covers the guiding principles of the COCS that relate to the 'Pre-harvest' control point.

Ann. II, 5.2a describes the responsibility of the contract-holder (demarcation of the contract area and of the harvesting blocks and the enumeration of trees (stock survey)).

Ann. II, 5.2b describes the roles of the LVD (to verify that the block map and stock survey are accurate*; and to provide the Commercial Department of the FDA with the information it will need to issue an acceptance of the block map survey work and the annual harvesting certificate (AHC)).

* i.e. that the block map and stock survey have been properly undertaken and that the forms and maps have been filled in correctly by the contract-holders (**Ann. II, 5.2c**), which "is a two-stage process, comprising first an office check to make sure that no simple administrative errors have been made" (**Ann. II, 5.2d**) and "second, if the first check is found to be satisfactory, a check conducted in the forest on a sample of at least 5% of the stock survey area to verify tree location, diameter, species and height" (**Ann. II, 5.2e**).

Ann. II, 5.2f lists what the COCIS is due to automatically check: (a) the contract area reference matches the contract-holder ID; (b) the four corners of the block maps fall inside the gross contract area; (c) the tree ID numbers have been allocated to the contract-holder for use in this contract area as tree labels.

Ann. II, 5.2g then specifies what the manual checking of the block map by the COC field officer then consists of, to confirm that: (a) the contract area reference and contract-holder ID match those on the stock survey forms submitted; (b) the dates surveyed match the dates on the stock survey forms; (c) the Universal Transverse Mercator (UTM) geographic coordinates match those on the stock survey forms; (d) the scale is correctly marked on the map, the distance between the cells is correct and the distances are correctly marked on the map; (e) the direction of the baseline has been correctly entered and the direction of the north arrow is correct in comparison with the baseline; (f) the survey line numbers and

[78] Note for future attention: the acronym "MG" is used but not yet defined in Sections 1 and 11 of the SOPs; it is unclear in the rest of the SOPs whether it designates an Operator or a LVD Manager.

the distance numbers are correctly denoted; (g) the block border drawn on the block map corresponds to the contract area location map and fits within the overall boundaries of the contract area; (h) the tree numbers on the map are in the correct cells, as indicated by the stock survey forms; (i) the species codes are correct.

Ann. II, 5.2h describes what (i) the COC field officer ("completes a standard COCIS form, which has a series of check boxes") and (ii) the data entry clerk or COCIS operator ("for entry into COCIS") do next.

Ann. II, 5.2i-j prescribe that "If any of the checks on the stock survey forms or manual block map fails, then the COCIS operator must print the forms/maps that failed the checks" and "the COC data entry supervisor send them to the contract-holder for corrections".

The process (Ann. II, 5.2a to j) is repeated with the corrected data until it is satisfactory and the Commercial Department can finally issue an acceptance of the block map survey work and the AHC as per Ann. II, 5.2b.

All these requirements are considered fulfilled (as givens and through VPA ratification) and implemented in the SOPSs and in the COCIS (LiberTrace). It will remain possible to refer back to them in doubt.

7.3.11.3 Harvesting

Section 5.3 of the VPA Annex II covers the guiding principles of the COCS that relate to the 'Harvesting' control point.

"This process describes the labeling, measuring and recording procedures to be followed by the contract-holders during tree felling" (**Ann. II, 5.3a**).

Ann. II, 5.3b explains the principle of "establishing traceability" by "measuring and tagging logs and stumps" which "is necessary to connect the original tree number (allocated during the stock survey) to the logs resulting from the tree harvest and to the stump left in the forest".

Once the annual harvesting certificate (AHC) has been issued (by the Commercial Department as per Ann. II, 5.2b above), the contract-holder is allocated bar-coded log tags and is permitted to commence harvesting at the locations indicated on the block map (**Ann. II, 5.3c**).

Ann. II, 5.3d provides the requirements for the measuring and tagging of logs and stumps, before the log measurer can then proceed to the next tree to be felled and repeat the same procedure:

- before felling the tree, the contract-holder's log measurer records the tree ID tag number assigned during the stock survey;
- on felling the tree, the log measurer affixes and records a new tag to the butt end of the log and another to the stump.
- ... The resultant tree-length log is measured: the diameters of both the butt and top ends and the length of the log to the crown break (to the nearest 10 cm). The log measurer records the data on a personal digital assistant (PDA) or the appropriate form.

Finally "the data collected is submitted to and processed by a COC data entry clerk who transfers them into the COCIS" (**Ann. II, 5.3e**).

All these requirements are considered implemented in the SOPSs and in the COCIS (LiberTrace). It will always be possible to refer back to them in doubt.

7.3.11.4 Forest log yard/landing

Section 5.4 of the VPA Annex II covers the guiding principles of the COCS that relate to the 'Forest log yard/landing' control point.

"This process describes how the contract-holder measures and labels felled trees once they have been extracted to the log landing and been cross-cut to length" (**Ann. II, 5.4a**).

"The same procedure is also followed if, at a later stage, the logs are cross-cut again into smaller logs or are simply dressed (i.e. have the first few inches removed to make the log look better for sale or export)" (**Ann. II, 5.4b**).

"The main principle is that an ID tag is attached to each new log so that traceability back to the original log, tree and block map is possible" (**Ann. II, 5.4c**).

"COCS log scalers [understood as being LVD COC inspectors] verify a sample to confirm that the logs have been accurately tagged and measured by the operator" (**Ann. II, 5.4d**).

"The species, diameter and log length will be recorded in the COCIS, which automatically checks the log data against the information stored by the contract-holder" (**Ann. II, 5.4e**).

All these requirements are considered implemented in the SOPSs and in the COCIS (LiberTrace). It will always be possible to refer back to them in doubt.

'VPASec Updates' on the 7th JIC version of the Forward Planner (FP) (February 25, 2019), not yet taking account of eventual 7th JIC decisions:

Regarding **Indicator 6.2** (all logs marked and entered in the **COCS**): "FDA conduct proper inspections to include this aspect of the chain of custody."

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issue:

- Oct – Dec 2018 regarding **Indicator 6.2** (above): "According to FDA, LVD staff does the scaling, while contract holder does the marking and tagging, which is done periodically. All documents related to this indicator can be found in field offices.*"*

  For future attention: Does that reflect the normal procedure? Is it being followed?

'VPASec Updates' on the 7th JIC version of the Forward Planner (FP) (February 25, 2019), not yet taking account of eventual 7th JIC decisions

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issue:

- Oct – Dec 2018 regarding **Indicator 6.3** (all timber harvested or transported originates from the legitimate contract or permit area): "According to FDA all contract holders are harvesting and transporting timber. Contract holders operate from their *approved* resource areas.
  IA did not carry out audit on this".

  Note: This refers to (harvested or transported) **timber traceability**.

  Note: Alleged IA findings should not be used without any clear reference and context. See ISSUE HII 35 raised in 6.2.2.2 (on inaccurate quoting of the IA).

For future attention: The statement is not correct. The IA has conducted traceability tests in LT. Another thing is *auditing CoC inspection of back-to-stump traceability in the forest by LVD CoC inspectors*.

'VPASec Updates' on the 7th JIC version of the Forward Planner (FP) (February 25, 2019), not yet taking account of eventual 7th JIC decisions

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issue:

- Oct – Dec 2018 regarding **Indicator 6.6** (FDA complies with legal requirements for (i) seizure and or (ii) auctioning of abandoned logs): "According to FDA, a team have been set up and is about to carry on the implementation of this indicator*".*

  Note: **abandoned timber** is not yet in the IA's scope.

7.3.11.5 Transport of logs or processed wood

Section 5.5 of the VPA Annex II covers the guiding principles of the COCS that relate to the 'Transport of logs or processed wood' control point.

"This process describes the procedure to be followed when logs and/or wood products are loaded onto a truck at the log landing in the forest, when logs are loaded at a holding area outside the port and when sawn timber products are loaded prior to shipping to the port and then transported" (**Ann. II, 5.5a**).

Ann. II, 5.5b: "Since the COCS is designed to have real-time data on where logs or wood products are in the supply chain, the following measures are applied:
(a) When the shipment is ready for loading, the operator's staff (i.e. log measurer or sawmill tallyman) completes a waybill form by:
- filling out the appropriate fields (barcode, species, diameter and length);
- sticking the bar-coded stickers to the waybill in the appropriate places" (**Ann. II, 5.5c**);
- listing all the bar-coded tag numbers or the bar-coded labels affixed to the wood products making up the load - these numbers need to be copied in by hand (**Ann. II, 5.5d**);
- dating and signing the waybill" (**Ann. II, 5.5e**).

Ann. II, 5.5f: "(b) Logs or wood products must be loaded in a way that enables the bar codes to be read by a PDA scanner without removing the load from the truck. Therefore either a space must be left between the end of the logs and the truck headboard (depending on the truck type) or all the logs will need to be loaded with the tags at the rear end, so they are clearly visible. This is to facilitate checking of the tag numbers by the COCS log scalers and the FDA when the truck is en route.

Ann. II, 5.5g: "LVD does 100% documentary verification of the waybills/delivery notes issued and received and...;
...has mobile teams of log scalers/inspectors who check a sample of all loads transported. The species, log diameter and length are recorded" (**Ann. II, 5.5h**).

Ann. II, 5.5i: "At the same time, the Liberian police will check that all loads passing checkpoints have the required waybills with them.

All these requirements are considered implemented in the SOPSs and in the COCIS (LiberTrace). It will always be possible to refer back to them in doubt.

7.3.11.6 Processing of timber

Section 5.6 of the VPA Annex II covers the guiding principles of the COCS that relate to the 'Processing of timber' control point.

Ann. II, 5.6a: "Detailed procedures describing how sawmilling and other processing of wood products are assessed will be developed in the first three years of implementation of the VPA".

Ann. II, 5.6b: "In principle, the operational control by the operator and verification by the COCS will cover (i) entry of wood raw materials into the mill site, (ii) storing of wood raw materials, (iii) processing, (iv) storing of processed products and (v) exit of products from the mill site".

Ann. II, 5.6c: "The following control and verification measures will be applied:
(a) the operator keeps records of all wood raw materials entering the mill site and uploads the corresponding data into the COCIS";

Ann. II, 5.6d: "(b) the operator keeps records of all wood raw materials stored in the mill site and uploads the corresponding data into the COCIS";

Ann. II, 5.6e: "(b') An inventory management system that records inputs and outputs of raw material from storage areas must be applied by the operator";

Ann. II, 5.6f: "(c) the operator's staff records the raw material going into the processing plant and all the products coming out by entering the data in standard forms. (c') ...This will give the base data for recovery assessment (for sawmilling this would be the sawn timber volume coming out of the mill expressed as a percentage of the volume of logs going in; (c'') ...in other instances it may be a simple conversion ratio, e.g. x m3 of sawn wood will be equal to y units of chair legs, etc.;

Ann. II, 5.6g: "(d) the operator keeps records of all processed wood products stored in the mill site and uploads the corresponding data into the COCIS";

Ann. II, 5.6h: "(d') ... An inventory management system that records inputs and outputs of raw material to and [processed products] from each warehouse must be applied by the operator;

Ann. II, 5.6i: "(e) the operator keeps records of all wood raw materials [read processed products] exiting the mill site and uploads the corresponding data into the COCIS";

Ann. II, 5.6j: "(f) a whole-sample batch of product processing (for example, one shift at a sawmill) must be monitored by LVD staff once the mill is ready to commence production. This sample will be the basis for the 'approved conversion rate'";

Ann. II, 5.6k: "(g) periodically and randomly, LVD staff will reassess the 'approved conversion rate'. These visits to the processing plant should be unannounced";

Ann. II, 5.6l: "(h) the COCIS monitors the conversion rate based on the standard forms submitted by the operator against the 'approved conversion rate'. Any significant variation will trigger further investigation and/or issue of a failure report";

Ann. II, 5.6m: "(i) the LVD conducts random checks on all operations and bookkeeping systems used by the operator to control the flows of wood raw material and processed products within the mill site".

All these requirements are considered implemented in the SOPSs and in the COCIS (LiberTrace). It will always be possible to refer back to them in doubt.

'VPASec Updates' on the 7th JIC version of the Forward Planner (FP) (February 25, 2019), not yet taking account of eventual 7th JIC decisions:

Regarding **Principle 7** (TRANSFORMATION AND TIMBER PROCESSING) and **Indicator 7.1** (A sawmill has an operator permit): "LIC/GoL needs to rule on those **sawmills** that have not been **registered**."

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issue:

- Oct – Dec 2018 regarding **Indicator 7.1** (above): "According to FDA, majority of the FMCs have obtained a sawmill permit.
  According to the IA, all of the verifiers of this indicator are non compliant."

  Note: Alleged IA findings should not be used without any clear reference and context. See ISSUE HII 35 raised in 6.2.2.2 (on inaccurate quoting of the IA).

'VPASec Updates' on the 7th JIC version of the Forward Planner (FP) (February 25, 2019), not yet taking account of eventual 7th JIC decisions:

Regarding **Indicator 7.2** (All logs destined for processing in Liberia are accompanied by their CoC ID numbers) and **Indicator 7.3** (timber products recorded through mill or processing activity to ensure traceability): "LIC/GoL needs to require for all documents to be uploaded on LiberTrace".

Note for future attention: Refers to **product registration in LT**.

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issue:

- Oct – Dec 2018 regarding **Indicator 7.2** (above): "According to FDA, there are no imports of logs into Liberia. All logs harvested in Liberia are barcoded on a regular basis though.
  IA reported non compliance on all verifiers"
- Oct – Dec 2018 regarding **Indicator 7.3** (above): "Logging verification starts from enumeration, block approval, and CoC system.
  IA reported non compliance on all verifiers".

  Note: Alleged IA findings should not be used without any clear reference and context. See ISSUE HII 35 raised in 6.2.2.2 (on inaccurate quoting of the IA).

7.3.11.7 Export

Section 5.7 of the VPA Annex II covers the guiding principles of the COCS that relate to the 'Export' control point.

Ann. II, 5.7a: "This process describes how the products already approved for export by the LVD are shipped to the port and then loaded onto the vessel".

Ann. II, 5.7b: "At the point of export, the COCS checks 100 % of tag numbers and product specifications within the COCIS and…";

Ann. II, 5.7c: "...physical inspections are conducted on a sample of the export consignment."

Ann. II, 5.7d: "The exporter has to inform the COCS when the vessel is ready for loading, so that the COCS can perform its task of sending a team to oversee the final loading of the vessel."

Ann. II, 5.7e: "While each log or bundle is being loaded onto the vessel, the COCS inspector will check them against the specifications to make sure they are covered by the valid FLEGT license and will record them in a PDA or on the appropriate form."

Ann. II, 5.7f: "The records will be uploaded into the COCIS and reconciled with the earlier product specification data stored to keep track of which product has actually been exported."

All these requirements are considered implemented in the SOPSs and in the COCIS (LiberTrace). It will always be possible to refer back to them in doubt.

7.3.11.8 Domestic market

Section 5.8 of the VPA Annex II covers the guiding principles of the COCS that relate to the 'Domestic market' control area.

Ann. II, 5.8a: "The control and verification procedures described in Sections 5.2 to 5.7 are applicable to the domestic market, when the timber originates from production areas covered by FMCs, TSCs and PUPs [PUPs: currently n/a]."

This requirement is considered implemented in the SOPSs and in the COCIS (LiberTrace). It will always be possible to refer back to them in doubt.

Ann. II, 5.8b: "Procedures to manage supply chains for timber from chainsaw logging operations will be developed within the period indicated in Annex VII to this Agreement."

The latter will actually not apply before the Chainsaw regulation (which is still pending approval) is enforced (See 6.4.1.1).

7.3.11.9 Imported timber

Section 5.9 of the VPA Annex II covers the guiding principles of the COCS that relate to the 'Imported timber' control area.

Ann. II, 5.9a: "The importer must demonstrate that imported timber comes from legal sources and is customs-cleared in accordance with the Liberian legislation."

Ann. II, 5.9b: "The legality of timber in the country of harvest can be demonstrated by certificates issued under certification schemes or other legality verification schemes that have been assessed and approved by the Government of Liberia in consultation with the governments concerned."

Ann. II, 5.9c: "Imported timber controlled by the LAS of another country covered by a VPA that has an operational FLEGT licensing scheme will be considered legal in the Liberian LAS."

Ann. II, 5.9d: "Imported timber demonstrated to be legal is included in the COCS at the border and is thereafter controlled and verified in the same way as domestically grown timber."

These requirements will likely not be implemented (enforced) before the 'Import timber' regulation (which is still pending approval) is enforced (See 6.4.1.1).

Current importance of imported timber: interviews conducted during Audit 3 (See 6.4.14.2 Efficiency of border control) have indicated “Not aware of any imports; there is zero data”.

‘VPASec Updates’ on the 7th JIC version of the Forward Planner (FP) (February 25, 2019), not yet taking account of eventual 7th JIC decisions

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issue:

- Oct – Dec 2018 regarding **Indicator 6.4** (**Imported timber** (not in transit) have complied with applicable legislation and regulations of the country of harvest): “Logs are not imported in Liberia. But FDA states that all logs/ timber products imported in Liberia are in compliance with the NFRL 2006 law and its regulations. Plywood for example was imported by FMC FLAMCO.
  IA did not carry out field check on this”.

  Note: Alleged IA findings should not be used without any clear reference and context. See ISSUE HII 35 raised in 6.2.2.2 (on inaccurate quoting of the IA).

  For future attention: The relevance to the VPA would be if these products were imported to be (processed and) re-exported under the VPA, which is unlikely to have been the case).

7.3.11.10 Timber in transit

Section 5.10 of the VPA Annex II covers the guiding principles of the COCS that relate to the ‘Timber in transit’ control area.

Ann. II, 5.10a: “Timber in transit has to be kept physically segregated from domestic or imported timber and transits Liberia under Liberian customs control.”

Ann. II, 5.10b: “Timber in transit will not be integrated in the COCS and will not be subject to issue of a Liberian FLEGT license at the point of export.”

Note: “Timber in transit will not be integrated in the COCS”: unless required under the forthcoming regulation.

Ann. II, 5.10c: “The country of origin and country of harvest must be clearly indicated in the bill of lading and other transport documents.”

All these requirements are givens and have been adopted through VPA ratification (subject to further regulation).

Ann. II, 5.10d: “Liberia will specify legal documents and related customs controls specific to timber in transit. Detailed procedures will be developed before the licensing system becomes operational”. This will not happen before the regulation on ‘Transit Logs, Timber and Timber Products’ (which is still pending approval) is developed and enforced (See 6.4.1.1).

Current importance of imported timber (in transit): see above.

‘VPASec Updates’ on the 7th JIC version of the Forward Planner (FP) (February 25, 2019), not yet taking account of eventual 7th JIC decisions

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issue:

- Oct – Dec 2018 regarding **Indicator 6.5** (**timber in transit** is (i) physically segregated from domestic or imported timber, and (ii) custom-controlled at all

times while in Liberia): “According to FDA, all timber product in transit are in compliance with NFRL 2006.
IA did not carry out field check on this”.

Note: Alleged IA findings should not be used without any clear reference and context. See ISSUE HII 35 raised in 6.2.2.2 (on inaccurate quoting of the IA).

Note: timber in transit is not yet in the IA’s scope.

7.3.11.11 Rubberwood

Section 5.11 of the VPA Annex II covers the guiding principles of the COCS that relate to ‘Rubberwood’.

Ann. II, 5.11a: “The SOPs for controlling harvesting, transportation, chipping and exports of rubberwood products will be developed during implementation of the VPA.”

Notes:

- ‘Rubber wood chips’ is included in the “other” timber products listed in the VPA Annex I (See 6.3.2.1), to which the FLEGT licensing scheme shall apply.
- “Rubberwood (and other timber products harvested under agricultural concession agreements) that will also be covered by the LAS” as per Ann. II, 2.1e (i.e. reformed, aging rubber trees, not plantation timber) is likely to be covered by the draft ‘Guidelines for Timber from Agriculture and Mining Concessions’ that have however been cancelled by FDA given issues with “Conversion Timber” (See 6.4.1.1).

Development of the related SOPs is unlikely to happen before the relevant regulation is developed and enforced.

7.3.11.12 Data reconciliation

Ann. II, 5.12a: “The COCIS is used for reconciling quantitative data between and within the various stages of the supply chain. The reconciliation processes aim to ensure that timber quantities by species and dimensions are consistent all along the supply chain, in particular to prove that the quantity dispatched does not exceed the quantity received and that during processing the ratio between the quantity of raw materials and the quantity of processed products is rational.”

Ann. II, 5.12b: “Protocols will be developed for reconciliation of consolidated data over several supply chains and over time with a view to providing evidence of the legality of the whole forest sector at regional or national level.”

For future attention: Implementation of volume or mass balance checks in LiberTrace needs to be assessed.

7.3.12 Annex II - Failure to comply with the LAS

This section of the VPA Annex II deals with the consequences of non-compliances to LAS requirements.

Ann. II, 6.1: “FLEGT licenses will not be issued unless all requirements of the LAS have been complied with.”

This is a recurrent principle in the VPA that has been identified and is being discussed under ‘Management of non-conformances under the VPA’ in 6.4.5 (also recalling 6.4.2 ‘Urgent need to update and review the Legality matrix’).

Ann. II, 6.2: “Any failure to comply with the LAS must be addressed. Existing legal procedures and sanctions apply for handling failures to comply with the LAS identified in the course of the verification activities. Depending on the breach, administrative fines, corrective action, suspension of activities and/or prosecution of the operator may apply.”

This article states that non-compliances must be addressed and sanctioned according to existing legal procedures.

Ann. II, 6.3: “Detailed guidance on how to handle breaches and to impose sanctions for non-compliance will be developed before the FLEGT licensing system becomes operational.”

This article suggests that additional guidance (on how to handle breaches and to impose sanctions for non-compliances) is needed in the context of the FLEGT licensing system before it becomes operational, which is partly relevant to the recommendation issued and the comment made in 6.4.5 as mentioned above. However, since it does not yet depart from the “full compliance” requirement stated in Article 6.1 (above), it therefore seems to only suggests that the ”existing legal procedures and sanctions [that] apply for handling failures” (as per Art. 6.2) may not be sufficient or adequate.

Ann. II, 6.4: “All failures to comply with the legality definition, COCS and corresponding sanctions will be recorded in the verification database (see Section 4.2)”. The “verification database” clearly refers to the COCIS; for further attention, assessment whether LiberTrace currently accommodates all these records is needed (incl. in the ESP’s ToR, contract and in the system).

7.3.13 Management of non-conformances under the VPA

Note: This chapter links to the previous one (7.3.12 Annex II - Failure to comply with the LAS) and the IA will consider combining both chapters in the next report.

Useful references:

- In the previous Audit 3 report: 6.4.6, 7.3.9;
- In the Audit 2 report: 6.4.4;
- In the Audit 1 report (A1R): 2.1.4 (in 2.1 Main C&Rs, derived from 6.1.1.7, themselves derived from the audit findings in 5.1.1.7).

Main conclusion derived from A1R:

***Full* compliance with *all* the requirements of the Legality matrix may not be a realistic condition for FLEGT licensing**. Insisting on full compliance with each and every requirement at P/I/V level – as is currently a condition for licensing, as per several VPA annexes (See 7.4.12 in this report) and could therefore in fact be changed through the JIC lawfully amending the relevant annexes (as per 7.3.1.17 reviewing VPA Art.26,3) - may even be counter-productive: it has been found that it risks blocking the system, or leading to consider certain legal requirements as “not auditable” (See 7.3.7), and/or propping unlawful deals between private operators and government officers (i.e. fueling corruption).

From a VPA implementation viewpoint, a document (“**system response procedures”)** setting out the implications of non-conformances regarding companies’ operations or products, including on the ground, and for the issuance of FLEGT Licenses, whether blocking for it or not etc., as discussed with EFI, could prove very useful indeed.

Follow-up during Audit 3:

This was seen as possibly having to wait until the technical assistance projects start again in 2019. However, EFI would discuss internally to see what has been done in other countries and whether, depending on time resources, it can initiate the development of this document. (EFI, 05.02.2019)

Main recommendations derived from A1R: 1) Waive 'full compliance with all the requirements of the Legality matrix' as a condition for FLEGT licensing, by amending the relevant VPA annexes (if not also the Article 6.1); 2) Consider the decision to have such "system response procedures" document prepared as a matter of priority and the relevant procedures designed and implemented.

Further dissertation under Audit 2:

- If it is judged that 100% compliance does not exist in reality, and can therefore not be taken as a realistic and workable requisite, then appropriate (gradual, deferred) responses must exist for non-key requirements to avoid blocking the system totally. This might *de facto* lead to defining key minimum requirements for FLEGT licensing (the current LM is already a sub-set of all legislation applicable to the forest sector, which creates a precedent – See 7.3.6.5).
- Like for the Export permits, though, some requirements could be complemented or replaced by general statements/attestations of regulatory compliance to be issued by the relevant bodies for the remaining administrative obligations, for which the IA is now aware of some relevant precedents (See 7.3.7 in this report).

Note for further action: Understand what such minimum requirements would be (if ever to be adopted by the JIC), whether they would differ from current Export permit requirements and if there is a need for harmonization.

Follow-up:

First released on 31st August 2017, the VPA Support Unit (VPASU) finalized an **Enforcement handbook** for use by forest rangers and other officers of the FDA involved with enforcing the forest laws of Liberia (See 6.4.1.2, Vol.1). This seems to (totally or partially – IA to figure it out) address the need for the above-mentioned document (system response procedures).

This analysis initiated in the Audit 1 report had led the IA to register a **RISK** (ref. **HR 3**) in the IA Progress Database. It has been revised below.

Follow-up during Audit 3:

Article 6.3 of the VPA Annex II (in 6, Failure to comply with the LAS), in fact includes a provision for "Detailed guidance on how to handle breaches and to impose sanctions for non-compliance [to] be developed before the FLEGT licensing system becomes operational". The provision therefore suggests that such additional guidance (on above) is needed in the context of the FLEGT licensing system before it becomes operational.

Note: Article 6.3 does not yet depart from the "full compliance" requirement stated in Article 6.1 (FLEGT licenses will not be issued unless all requirements of the LAS have been complied with) and therefore only suggests that the "existing legal procedures and sanctions [that] apply for handling failures" (as per Art. 6.2) may not be sufficient or adequate.

FDA/IAWG response to the Main R&C in the Audit 3 report

Risk (HR 3): Insisting on full compliance with all LM requirements may be counter-productive, risks blocking the system, or fueling corruption, or circumventing some requirements

Response: FDA categorically rejects this assertion as it is not based in fact and no evidence is presented in Section 3.7 of the Audit Report of Section 7.3.9 of the Annex. The Government recognizes that more resources are needed for enforcement, however FDA estimates that over 80 verifiers have improved compliance in a significant way. Because this is a process that has not ended, the Government has envisioned to support this process to work toward full compliance with the LM requirements.

The FDA requests that evidence is provided for the statement that current implementation is "propping unlawful deals between private operators and government officiers (i.e. fueling corruption). In the absence of any documentary evidence provided to or observed by the Auditors, the FDA insists this statement is removed from the Audit Report.

Mitigation Measure: The update of the Legality Matrix is ongoing, upon completion, the verifiers will be tested and proven.

Responsible Department: Commercial Dept./LVD

Time Frame: Before the 9th JIC in 2020

Reference: Updated Legality Matrix

Remarks: The Updated Legality Matrix approved in 8th JIC and tested before the 9th JIC

IA review of FDA/IAWG response:

- The IA does not deny "*that over 80 verifiers have improved compliance in a significant way*" and "*that more resources are needed for enforcement*".
- The IA recognizes that VPA implementation "*is a process that has not ended*" and fully acknowledges the Government of Liberia's sovereign legitimacy to "*support this process to work toward full compliance with the LM requirements*.
- The IA actually wrote that it is "full compliance as a condition for licensing" (not "current implementation" as the FDA quoted) that "*risks blocking the system, etc.*".
- "*The FDA requests that evidence is provided*": by nature, potential risks cannot be evidenced. However, the IA reports have provided multiple examples of requirements not being checked and enforced, or of incompliances just being ignored (and Export permits still being issued). There is therefore no reason why the IA should remove this statement from the Audit Report.
- Corruption is an undeniable risk anyway. It is increased where operators have to demonstrate compliance (e.g. to export) and are so obviously incompliant in many aspects.
- Full compliance with all LM requirements at all Principle/ Indicator/Verifier levels is not a SMART goal: it is Simple (if not simplistic), possibly Measurable, but neither Accessible, nor Realistic, nor Timed; and as such it can never be met.

- An "*Updated Legality Matrix, approved in 8th JIC and tested before the 9th JIC*" refers to the necessary updating of the LM which is a different issue and will actually increase the current compliance gaps by "raising the bar" further and increase the risks that the "full compliance condition for licensing" is eventually assessed by analysts as both unrealistic and counter-productive.

The **RISK** (ref. **HR 3**) registered in the IA Progress Database therefore remains in place, as revised below:

RISK HR 3
Impact level: High
Identified RISK factor: Insisting on full compliance with the totality of all LM requirements as a straight condition for FLEGT licensing is likely to be both unrealistic and counter-productive
Identified RISK description: Prompting the circumvention of some requirements in LAS implementation / compliance / enforcement (developing a culture of avoidance), or blocking the system (if strictly enforced), or fueling corruption (propping unlawful deals between private operators and government officers, to "deal" with the problem)
Recommendations: 1) Waive 'full compliance with all the requirements of the Legality matrix' as a condition for FLEGT licensing, by amending the relevant VPA annexes (including Annex II, Art. 6.1 – "*FLEGT licenses will not be issued unless all requirements of the LAS have been complied with*"); and 2) Implement the provision in Annex II (6, Failure to comply with the LAS; Art. 6.3 - "*Detailed guidance on how to handle breaches and to impose sanctions for non-compliance [to] be developed before the FLEGT licensing system becomes operational*"), suggesting that the "*existing legal procedures and sanctions*" [that] "*apply for handling failures*" (as per Art. 6.2) might not be sufficient or adequate, which may include approving and implementing the Enforcement Handbook (currently a draft released on 31st August 2017).

7.3.14 Annex II - Licensing

Related section in this report: 7.3.4, Annex II - Introduction of, and conditions for licensing.

Ann. II, 7.1: "The Liberia Licensing Department (LLD) will be established to issue FLEGT licenses to export consignments of timber products complying with all the requirements of the LAS."

This article links to other articles on establishing the LLD (6.1.7.2) and on the full compliance requirement for export licensing (in 6.4.5 as mentioned above).

The following requirements were adopted through VPA ratification and are considered fulfilled, subject to implementation in the respective COC SOPs, for future attention:

Ann. II, 7.2: "The licensing process consists of the following phases: (a) The exporter applies to the LLD for a FLEGT license for each export consignment".

Ann. II, 7.2': "(a') A standard application form will be developed within two years of signature of the VPA to specify the information and documents required".

Ann. II, 7.2'': "(a") The LLD will register the application and send a request for verification to the LVD".

Ann. II, 7.3: "(b) The LVD verifies that the exporter and possible suppliers associated with the export consignment concerned comply with the Liberian legality definition and"…. Note: this is a requirement for all suppliers in the chain.

Ann. II, 7.3': "(b') ...that the products for export originate from legal sources and are duly entered in the COCIS". Note: this encapsulates the whole legality and traceability requirement that is assessed in other articles.

Ann. II, 7.3": "(b") The detailed procedures and checklists for the verification by the LVD will be developed within two years of signature of the VPA".

Ann. II, 7.4: "(c) The LVD will then send a written communication to the LLD to confirm the outcome of the verification. The format and process for this communication will be developed within two years of signature of the VPA".

Ann. II, 7.4': "- If the LVD confirms that there is full compliance with the LD, the LLD issues without delay a FLEGT license to the export consignment concerned. The detailed procedures for informing the applicant and issuing FLEGT licenses will be developed within two years of signature of the VPA".

Ann. II, 7.4": "- If any non-compliance is detected at this stage, the LVD will notify the LLD that no FLEGT license can be issued, indicating the reasons for this rejection, and record the rejection in the COCIS. (...) The detailed procedures for handling non- compliant consignments (...) will be developed within two years of signature of the VPA".

Ann. II, 7.4'": "- (...) The LLD will notify the applicant that the application for a license has been rejected and of the reasons for this rejection. The detailed procedures for handling non- compliant consignments and informing the applicant will be developed within two years of signature of the VPA".

Ann. II, 7.5: "(d) Once the FLEGT license has been issued, the exporter sends a copy of the license, including the specification, to the customs and port authority, with notification of the proposed date of loading".

Ann. II, 7.5': "The customs and port authority check that the license is consistent with the other official export documents and meets the standard formats".

Ann. II, 7.5": "The LLD keeps records of all applications for FLEGT licenses received, including those that resulted in rejection".

Ann. II, 7.6: "The technical specifications for FLEGT licenses, including the license format and period of validity, are presented in Annex IV to this Agreement".

7.3.15 Annex II - Independent audit

Ann. II, 8.1: "The objective of the independent audit (IA) is to assess whether the LAS is functioning effectively, appropriately and with credibility and to identify potential weaknesses and risks in the structures and implementation of the system."

Ann. II, 8.2: "The terms of reference for the IA, including the tasks, qualifications required and method, are presented in Annex V to this Agreement."

These two requirements are considered fulfilled by definition and through implementation of the present IA mandate.

7.3.16 Annex II - Appendix A: Legality Definition, Matrix and Verification Procedures, 1. Plan for Forestry Policy and Law Reform

The next three articles have already been used in the discussion about the VPA Legality Definition in 7.3.5 (Legal and regulatory framework):

- **Ann. II, A1.1a**: "The Legality Definition set out below has been developed through a participatory process with a wide range of stakeholders."
- **Ann. II, A1.1b**: "During development of the Legality Definition, Liberian stakeholders identified a number of ambiguities, gaps and inconsistencies in the existing laws, regulations and policies that underlie the Legality Definition, and that these need to be addressed in order to achieve the good governance desired in the Liberian forestry sector."
- **Ann. II, A1.1c**: "The Government of Liberia therefore plans to carry out legal and policy reforms in respect of the forestry sector in consultation with all relevant stakeholders. It is expected that such legal reforms would be completed by 2013, and…";

Ann. II, A1.1d: "...that the Legality Definition will be updated thereafter to reflect these amendments." Note: That article has been used in the discussion about the 'Urgent need to update and review the Legality matrix' in 7.3.7 in this A4R Vol.2.

Parallel, on-going processes that are being monitored under 6.4.1.1-2 in A4R Vol.1:

- Development of the following ("new") regulations;
- Addition to the IA's scope of new regulations that have come into force (as per the IA's ToR also recalled in 6.4.1.1);
- Development of related verification procedures (i.e. SOPs) for inclusion into the COCS;
- Updating of the Legality matrix.

New regulations being monitored under 6.4.1.1-2 in A4R Vol.1:

- **Ann. II, A1.2a**: "Areas that require policy and legal reforms include:
  (a) **Social Agreements**: Establishment of procedures to govern negotiations of Social Agreements, including (i) timing of negotiations; (ii) timeliness of both the payments and transfers of funds to communities; (iii) minimum content of social agreements and enforcement of provisions; (iv) community user rights in respect of concession areas, and (v) employment of non-skilled workers, etc.".
- **Ann. II, A1.2b**: "(b) Promulgation of **Community forestry regulation** to provide specific guidelines for community forest management".
- **Ann. II, A1.2c**: "(c) Use of **abandoned logs** including procedures for their auction, registration of legal ownership and entry into the LAS". See '**Abandoned Logs, Timber and Timber Products'** regulation.
- **Ann. II, A1.2d**: "(d) Use of **logs confiscated** by the Government on grounds of being harvested in violation of the law". See '**Confiscated Logs, Timber and Timber Products'** regulation.

- **Ann. II, A1.2e**: "(e) Integration of **Independent Certification Schemes** into the LAS: discussion and agreement with stakeholders on the use of independent certification scheme(s) in Liberia and identification of the independent certification scheme(s) Liberia would recognize for the purpose of establishing the legal origin of logs imported from non-VPA countries". This is also being discussed under 7.3.8.5 (Legality verification of operators working under an independent forest management certification scheme).
- **Ann. II, A1.2f**: "(f) **Debarment List**: The establishment of a debarment list identifying those individuals who contributed to the civil war of Liberia and are thus banned from working in the forest sector, as required by existing FDA Regulations".
- **Ann. II, A1.2g**: "(g) **Processing facilities**: A regulation relating to (i) the establishment of processing facilities by holders of FMCs, and (ii) guidelines on operation of processing facilities". This likely relates to the Regulation on Timber Processing # 112-08.
- **Ann. II, A1.2h**: "(h) **Third Party Access** and Use of Forest Products: Regulations on third party access and use of forest resources in another parties' concession area". This likely relates to the Regulation on 'Third Party Access to Forest Resource License Areas'.
- **Ann. II, A1.2i**: "(i) Validation and promulgation of **Chainsaw Regulations**: to guide new procedures for working with the informal sector." See revised Chainsaw Milling Regulation # 115-11.

7.3.17 Annex II - Appendix A: Legality Definition, Matrix and Verification Procedures, 2. Legality Matrix

7.3.17.1 Foreword

Ann. II, A2.1a: "In determining whether timber and or timber products being sold on the Liberian market or being exported from Liberia meet the legal standard set out in the definition of "legal timber", the principles and indicators as well as the detailed verification procedures as set out in the following table shall apply". In other words, the Legality Matrix (which "the following table", pp.15-54, embodies) is the detailed Legality Definition, providing a standard for assessment of timber legality and providing related verification procedures.

Ann. II, A2.1b: "The [small] table [underneath] describes the format of the Legality Matrix (Principles, Indicators, Verifiers, and Verification Guidance)". [It recalls that] "The matrix is divided into 11 principles, with indicators and verifiers listed underneath each principle, and verification guidance outlining how the indicators should be checked for compliance. The verification guidance (indicating Objective, Regulatory Control, Verification Method, and Frequency) reflects current thinking but may be subject to change during further development of systems and procedures."

These two articles above are considered fulfilled as givens and adopted through VPA ratification.

Note: The possibility to change the verification guidance to reflect further development of systems and procedures, thus in revised versions of the LM, is noted in 6.4.2 (Current relevance of the Legality matrix).

Ann. II, A2.2 (small table):

- [Definition of] "The Legality Principle: The Liberian legality definition is divided into 11 legality principles. Each legality principle consists of a number of legality indicators with verifiers under each indicator. A verification procedure has been developed for each indicator".
- [Definition of] "Legality Indicators: This outlines the norm or requirement the Liberian Verification Department (LVD) needs to check for compliance with the specific legality principle".
- [Definition of] "Legality Verifiers: Verifiers are evidence the LVD inspectors/or assessors will look for when evaluating if the specific norm or indicator has been met. This list is not exhaustive and the assessor may use additional means of verifying the relevant indicator if required."
- [Definition of] "Verification Guidance. These principles guide LVD inspectors/or assessors in their evaluation of a particular indicator:
  - Objective: The objective puts forward the purpose of the verification procedure.
  - Regulatory Control: Provides for the normative and/or regulatory requirements in respect of a particular indicator and responsible government bodies.
  - Verification Method: Provides for description and method of verification and will consist of document review, field inspection, confirmation and/or consultation.
  - Frequency: Provides for the verification frequency of the indicator or certain aspects thereof by the LVD".

Note 1: These are givens. The definitions also recall the function of the LM, as the "timber legality verification standard" for the primary use of the LVD.

Note 2: These elements of the LM are also discussed in 6.1.7.4 above ('Legality definition and related verification procedures') in the light of the related VPA articles.

7.3.17.2 The Legality Matrix itself (table)

Ann. II, A2.3 provides the Legality Matrix itself (long table).

Before going through the Legality Matrix (LM) in detail, general issues have already been observed and are reported under 7.3.6 in A4R, Vol.2 (Urgent need to update and review the Legality matrix) and Issue **HII 2**. Note: Any newly detected issues shall be moved thereto too in the next audit report.

Another emerging issue has been the lack, in many cases, of a clear and accurate allocation of a particular task to a specific government body, particularly when it comes to figuring out which FDA department is in charge, where it just says "the FDA, the FDA… (See Indicator 2.1 for example)".

In the absence of clear procedures for each FDA department, this will not help to understand the division of responsibilities for implementing the Indicators (and Verifiers) and how the different roles and responsibilities are assigned (associating the right role and responsibilities with the right institution, and to assess whether the latter is effective and efficient. This is indeed a very serious gap.

In some cases, the LM does allocate roles to a particular FDA department (examples are Indicators 1.1, 1.2, 2.2, 2.4, 2.7, 2.9, 3.5 and 4.1), particularly so in the Verification Method under the heading "Description", and there are at least a further 17 indicators that also refer to the relevant FDA departments.

But there are also instances of "FDA, this and/or that Department" (i.e. one and /or another), which may create confusion). So, the problem is not a consistent one. In some cases, where the LM does not specify which Department in the FDA is responsible for the verification, it may *naturally* belong with one Department or the other. Where it doesn't and no instruction has been released by the FDA to allocate this responsibility to one or the other Departments, and no Department in the FDA has currently taken responsibility for it, then only assumptions can be made or the gap must be highlighted.

The lack of a clear division of roles and allocation of responsibilities, especially in the Legality Matrix, has in fact been observed and raised as an issue in several instances for which separate issues (HII 21 and 22 (for LED), HII 26 and MII 11 (for CFD EIAD), and MII 12 (for CyFD vs. CFD)) were raised during the Audit 3.

The IA shall consider registering a general issue for the LM, also to be added as one more reason to review/update the LM (done in this A4R Vol.2, 7.3.7) and for the LM enforcement plan (done in this A4R Vol.2, 7.4.12.

Note for further attention: The comment recalled in 1.4 (under 'Government inspections and audits', from A2R, 3.16) that "The CFHP checklist [contrary to the LM] makes clear reference to the division of responsibilities regarding the content of the CFHP (…)" might need to be reassessed; including whether it could clarify the division of responsibilities in the LM (which is unlikely if the LM just refers to the need to comply with the CFHP without detail?).

The (already mentioned) document titled 'LAS Verification Framework'[79] in its Table 2 - 'Principles and Verifiers of the Liberia Legality Standard (adapted from the LM)' identifies the 'Relevant Government Department/s' responsible for each Indicator. Further IA action: IA to figure out whether this adds or changes anything to the LM.

Other further suggested action: Figure out 1) what the most appropriate structure and format (e.g. MS Word or Excel) are, in order to present comparisons of criteria (as mentioned in several places in this report) and assessments, and 2) whether a working version of the LM exists with that structure.

Regarding the latter, a documentary research of existing (static or working) versions of the LM (or of the entire VPA or the entire Annex II containing the LM) that could be used has provided the following results:

[79] 'Liberia Legality Assurance System (LLAS) Verification Framework' (SGS/ FDA, 2013, by J. Laporte)

Table 10: Research of LM versions that could be used to compare criteria

File name	Org.	Format	Document title	Content	LM Pages	Comment
09-VPA en11-signed copie.doc	VPA	MS Word	VPA	Whole VPA	EU/LR/Annex II/en 239 to 79 (49 pages)	One Indicator per page
VPA_TEXT_-_PDF_4.pdf	VPA	Active pdf	None	Whole VPA	EU/LR/Annex II/en 15 to 64 (49 pages)	One Indicator per page
EU-Liberia Voluntary Partnership Agreement_OJEU.pdf	EU	Active pdf	VPA	Whole VPA	L191/23 to 54 (31 pages)	Indicators allowed to break over pages
ANNEX II Legality Assurance System.pdf	VPA	Active pdf			pp. 15 to 54 (39 pages)	Breaks over pages
Legality Def with plantations and ver procedures 2010.11.doc	EFI	MS Word	Liberian Legality Definition Verification Table	LM	pp. 4 to 53 (49 pages)	Ex-EFI working doc Breaks over pages Different layout
SD 01-01 - Audit Checklist 2015 10 23.docx	SGS	MS Word	Audit Checklist and Report	LM	pp. 1 to 88 (88 pages)	A checklist to assess against the LD Different layout
VPA_LegalityMatrix_Filters_30march2015_TdF.xlsx	EFI	MS Excel	None	LM	1 sheet, 650 rows	Ex-EFI working doc Different layout
Compliance Procedures for LM_V 2.2 (public, not yet endorsed).pdf	VPA-SU		Compliance Procedures for the VPA Legality Matrix Verifiers	LM	pp. 19 to 178 (159 pages)	SOPs Different layout

In all official versions there is for each Indicator (as also/already described under 6.1.14.1 in A4R Vol.2):

- the ‘Principle’ (where appearing for the first time)
- the ‘Indicator’
- a list of ‘Verifiers’ for the Indicator with, for each Verifier the corresponding ‘Contract or Permit Type’ to which the Verifier applies
- ‘Verification Guidance/ Procedure (ref.)’, with two chapters Objective and Regulatory Control
- the ‘Verification Method’, with two chapters Description and Verification means
- the ‘Verification frequency’, and
- the References.

Notes:

- It should possible to modify the structure so as to have, under each Indicator, the list of 'Verifiers', the 'Verification Guidance/ Procedure part (with its two chapters), the 'Verification Method' part (with its two chapters), the 'Verification frequency and the References aligned vertically in one (very) long table.
- It is unclear at this stage whether the list of Verifiers must be read before the other three remaining parts.

The '**Liberian Legality Definition Verification Table**' has a different layout. For each Indicator, it includes:

- the 'Principle' (where appearing for the first time)
- the 'Indicator'
- the list of 'Verifiers', and then
- under 'Verification Guidance/ Procedure (ref.)' it regroups:
  1. Objective (as in the official LM)
  2. Operational Control (vs. Regulatory Control in the official LM)
  3. Verification means (as in the official LM)
  4. Key Documents
  5. Function/ Responsibility
  6. Verification Method (as in the official LM)
  7. Frequency (as in the official LM)
- References (as in the official LM)
- Application (vs. Contract or Permit Type in the LM).

Note: The latter has apparent merits (Key Documents and Function as separate sections), however it seems to be older that the official LM and may not have been retained as the structure for the final official LM. Or it may be a working and interpretation document of the LM that is preparatory to the assessment checklist that was derived from the LM. For further IA's attention: it might provide relevant elements that are additional to the LM.

The '**Legality Matrix with Filters**' document also has a different layout. For each Indicator, it includes vertically (i.e. as rows):

- the 'Principle' (where appearing for the first time)
- the 'Indicator'
- the list of 'Verifiers', and then
- under 'Verification Guidance/ Procedure (ref.)':
  Objective
  Regulatory Control

The other items are provided as column headers that can be used as filters:

- Verification element
- Stakeholder Involved
- Department/division
- Division
- Implementation date [of the element]
- Roles [looks empty]
- Location [looks empty]
- Support [ESP]
- Verification frequency
- Contract or Permit Type

- Verification method
- Legal Reference

Note: The latter also seems to have merits and it is more recent than the official LM. For further attention: it might also provide relevant elements that are additional to the LM.

The '**Audit Checklist**' has a different layout, still. For each *Indicator*, it includes vertically (i.e. as rows):

- Text of the Indicator
- Objective
- Regulatory Control, and
- Verification Method;

The other audit parameters are provided in columns for each *Verifier*:

- Text of the Verifier
- Verification guidance
- Declaring entity
- Audit entity
- Level
- Contract or Permit Type
- Verification means
- Document expiry
- Verification frequency
- Guidance notes
- Legality References
- Audit evidence
- Public statement
- Compliant / Non-compliant
- Verifier (or corrective action request) expiry

Note 1: The latter also has apparent merits (all depending on the intended use, e.g. comparing or analyzing criteria or auditing) and it is also much more recent than the official LM. For further attention: it might also provide relevant elements that are additional to the LM.

Note 2: As the above-mentioned 'LAS Verification Framework' document further explains, "the legality checklist developed as part of the VPA procedures, considers verification filters [from Declaring entity to Verification frequency in the above list of audit parameters]. These filters are used to streamline the audit (…) by producing the appropriate checklist for a specific audit that contains only the relevant Principles, Indicators and Verifiers. Even though compliance is defined at verifier level, the audit is essentially taking place at indicator level".

The '**Compliance Procedures for LM**' has a different layout yet. For each *Verifier* (or sometimes more than one Verifier) it includes in a complex procedure layout:

- Contract or Permit Type [that does not seem to be a discriminant within a Verifier]
- A procedure-type of flowchart with, for each step:
  - Executed by
  - Approved by
  - Document type

- Description

Then again in columns for each *Verifier*:

- Legal Reference
- Non-compliance
- Verification Guidance/ Procedure
- Verification frequency
- Verifiable Document
- Associated Document
- Recommendations
- Notes

Note: The latter also has clear merits as a procedure and it is the most recent document that has been derived from the LM. It might also provide relevant elements that are additional to the LM.

For further attention: The IA shall assume that the LM has been developed in accordance 1) with the Law and 2) with the guiding principles of the COCS in the VPA (+ Ann. II, 4.2 and including Ann. II, Appendix B) and the then-existing COC SOPs. Recommendation: This leaves space for confirmation (of the above assumption) through stakeholder/expert consultation and sampling for 2) above, or a systematic detailed study to be commissioned by the JIC, as the JIC may find necessary and appropriate as part of a review of the Legality Matrix.

7.3.17.3 Exploration of the VPA Annex II, Appendix A (continued and ended)

Ann. II, A2.4: LIST OF ACRONYMS

This section contains two pages of acronyms with their meaning, as used in the entire VPA (it is not clear in that case why the list is located there) or in the rest of the document to come.

Ann. II, A2.5: LEGISLATION REFERENCED IN LIBERIAN LEGALITY DEFINITION

That list has been used in the discussion of the 'Legal and regulatory framework relative to LAS implementation' in 7.3.5; it is being monitored and updated therein.

These two articles above are considered fulfilled as givens that have been adopted through VPA ratification.

7.4 Implementation of VPA requirements

7.4.1 Implementation of the role of Government, the Commercial Forestry Department (CFD) of the FDA

The primary goal of this section is to research and assess whether the roles and responsibilities of the Commercial Forestry Department (CFD) are clearly identified and assigned to the CFD, and implemented, before assessing performance-based criteria for the CFD.

Useful references

- In the previous Audit 3 report (A3R): 6.4.7;
- In the Audit 2 report (A2R): 6.4.6;

- In the Audit 1 report (A1R): 2.1.6 (in 2.1 Main C&Rs, derived from 6.1.2.1, themselves derived from the audit findings in 5.1.2.1, also in A1R).

7.4.1.1 Background from Audit 1

Conclusions (from A1R, 6.1.2.1, 3):

No field inspections are admittedly being completed by the FDA Commercial Forestry Department (CFD) in Region 3.

The main reason claimed for this situation is a lack of resources. Annual budgets are not approved for the amounts needed to do the fieldwork, which leads to:

- A lack of vehicles allocated to field staff;
- Poor maintenance of the vehicles (as per maintenance records);
- Lack of fuel to reach the field; and
- No daily allowance paid to staff for lodging and food while in field.

Having field staff hosted by the concessionaires also creates a clear conflict of interest, compromising ability of the FDA to objectively complete their work while depending on the operator for material support (e.g. lodging, food, and sometimes transport).

Main conclusion from A1R: Mostly due to insufficient funding, the CFD inspectors in Region 3 (and probably in other regions) of the FDA have grave limitations in (i) fulfilling their day-to-day responsibilities, due to the lack of essential resources for running field inspections (vehicles, maintenance, fuel, perdiems), and (ii) maintaining objectivity while depending on operators for logistical support.

Main recommendation from A1R: **Increase budget allocation** for government inspectors to be enabled and motivated to fulfill their day-to-day control responsibilities independently of the private operators. In turn, they will also contribute to more effective government revenue collection (of e.g. taxes, fees, fines).

7.4.1.2 FDA's annual budgeting (and actual budget allocation)

During Audit 1, the IA requested evidence of FDA's budget allocation process: requested amounts, approved amounts and the amounts actually released in the 2017 budget year. However, no information had been forthcoming from the FDA at the time of closing the Audit 1 report.

This issue was again mentioned during a meeting with the new MD of the FDA in April 2018 as part of Audit 2. Having observed numerous resource challenges in the field for the FDA teams, the IA wished to start understanding how the budgeting exercise has worked so far for the FDA.

The IA asked to be provided, for both the previous and the current fiscal years (which would be up to June 2018 at the time):

- Budgets actually received, vs.
- Approved budgets, vs.
- Requested budgets.

The IA was particularly interested in the following departments: LVD and CCFD and the means they have to operate, with the appropriate level of detail.

The MD of the FDA advised the IA to contact the FDA Financial Comptroller, which was done on 19.04.2018, with a reminder sent on 25.06, but the request remained unattended during Audit 2.

The IA raised an **ISSUE** about this in the IA Progress Database (ref. **HII 19**):

ISSUE HII 19
Impact level: High
Identified ISSUE: Failure by a Party to respond to IA's requests for information, documents or data against the provisions of the VPA (Art. 11.5a)
Recommendation: Ensure the IA has access to the information, documents and data necessary for the performance of its functions as per VPA Art. 11.5a and auditees respond to information requests and questions.

Based on the follow-up during Audit 3, this Issue could have been put on hold, however it has been reused to cover several other instances of 'No further response received despite several reminders' or 'Pending questions' signaled in the report).

7.4.1.3 FDA reporting and sanctioning protocols

Conclusions (from A1R, 6.1.2.1, 4):

On the basis of the observations made in Region 3, and for follow-up during the next audits, it is likely that FDA has not implemented for many years any formal system of fining operators who are not compliant with legal requirements (including the CFHP). This links to the absence of any publication by the PAD of any monetary fines having been imposed nor any regulatory action taken against any contractor over the past five years (6.4.15 in the Audit 3 report).

This also links to the conflict of interest issue in 7.3.8.6 in this A4R Vol.2.

This is now being further analyzed under 6.2.4.2 in A4R Vol.1 on LED.

Further IA action: Evaluate private operators' "progressiveness" (willingness to be properly checked to become more virtuous and to be enabled to demonstrate legal compliance, and to work in an open and transparent forest sector ("prefer fines to bribes") as they critically need good governance and good infrastructure to operate). Notes: This Action could be move to a section to be created on Stakeholders, Private Sector. Also noted in Detailed Audit 4 activity planning: officially re-audit and report ICC achievements (as observed during Audit 3) as good examples that compliance (Management plans, Information System etc.) is possible.

7.4.1.4 Effectiveness of CFD field inspections and reporting

The effectiveness of the field inspections conducted by CFD staff was further reviewed during Audit 2. The Contracts' manager responsible for the issuance of the monthly report was interviewed at CFMA "X". The following evidence was gained, having viewed the inspection report from the field:

- The monthly production and activities report was:
  - Addressed to: [the Manager, FDA National Authorizing Dept. (Contracts)];
  - From: [the Regional Manager, Region 4];
  - Titled (Subject): March 2018 Production and activities report, and;

  - Dated April 2018.

- Several non-compliances were raised:

  - Logging roads and bridges not to standard;
  - Earthwork in some skid trails;
  - Lack of PPE for chainsaw operators;
  - Siltation of streams due to felling in some buffer;
  - Poor waste management in camp;
  - Poor sanitary facilities with more than 3 persons in a room;
  - Delaying camp construction work since November 2017.

- No follow up occurs from FDA on monthly inspection reports that are submitted by FDA field staff, thus undermining the authority of the field staff by incapacitating them in their duties of maintaining legal operations in Liberian forestry concessions.

In relation to the observed lack of resources in 6.4.7.1 (above), it was also observed during the field inspection and the interview with the Regional Manager of Region 4 that FDA inspectors were not supplied with the following:

- Diameter tape;
- Clinometer;
- Transport means - A motorbike was allocated some years ago, but due to lack of fuel and a superior officer using the bike, the Community Extension officer was not able to use it to fulfill his functions in the field. Today no person could give evidence of what has happened to the motorbike;
- PPE (e.g. rain gear);
- Camera.

The above evidence is further supported by correspondence between the Technical manager of LVD and the Forestry manager of SGS, where the former states the following in a mail, dated 9 March 2018:

“FDA management has constituted a team of five men to conduct assessment in Forest venture/ICC for a period of ten days. The team has been mandated to do a robust inspection in addition to recent inspection that led to the payment of a five thousand United States dollars’ fine.

However, this team lacks equipment to conduct these exercises and Management is therefore requesting that you kindly provide us the below field equipment.

- GPS-1;
- Diameter tape-1;
- Length tape-1;
- Clinometer-1;
- Clipboard-1”.

This shows the FDA CFD asking SGS/LVD to be provided with field equipment, which highlights the different situation of these two departments in relation to means to operate.

During Audit 3, the IA team received critical evidence that the monthly reports from the Regional Managers in the field, to the Manager of the National Authorizing Division (NAD), or “Contract Administration Division”, of the CFD in Monrovia, could not be sent, processed and filed electronically as NAD has no computer in the FDA Head office (staff uses own computers where possible).

Conclusions (updated): The FDA Commercial Forestry Dept. inspectors in Region 3 who attended the 1st Audit showed grave limitations in (i) fulfilling their day-to-day responsibilities, due to the lack of essential resources for running field inspections (vehicles, maintenance, fuel, perdiems) and reporting, and (ii) maintaining objectivity while depending on operators for support (lodging, food).

Considering those limitations, it was felt that the availability of appropriate funding might create a challenge for the FDA to take over the additional functions of the LVD.

During Audit 2, the Regional Manager of Region 4 had issued a monthly inspection report. This suggests inconsistency in the operating capacity of the different FDA Regions to implement the LAS, or variability in time, which was further investigated during Audit 3 (See 6.2.1/7.4.1).

The Audit 2 results, however, show that the FDA had not followed up on the last report and the interview with the Regional Manager confirmed that there had never been any follow-ups from FDA Head office on non-conformances and other issues raised by field staff in any of the monthly (or other) reports. The same conclusion had been reached in Region 3 during Audit 1 (when inspection reports have indeed been issued). It thus further reinforces the strong probability (and risk) that no follow-up of any nature occurs in any of the regions on field inspection reports.

During Audit 3, the IA team received further evidence of this same issue: no follow up on issues raised in the monthly reports by the Regional Managers to the National Authorizing Division (NAD) of the CFD in Monrovia (See Region 2 report dated July 5, 2018 with regard to non-compliances related to water quality).

During Audit 3 too, an additional, critical issue was evidenced, that the NAD in Monrovia couldn't receive the monthly reports from the Regional Managers electronically (no computer in Head office).

Further IA action: The above relates to the review of the VPA Art. 22,2d in 6.4.13 (information on monetary fines imposed, or regulatory action taken against contractors). In due course: IA to compare the reporting procedures in the field, as observed above, with the formal requirements of the FDA (based on a checklist).

Further findings from Audit 3 relate to the budgeting issue within FDA and for the CFD in particular, now investigated under 7.4.1.7.

The Overall conclusion from 7.4.1.7 includes:

- Total budget totally insufficient
- Goods & services budget grossly inadequate for the current financial year (at 1.6% of the total CFD budget)
- No Capex budget included in the current budget year
- Current support for field staff virtually nonexistent.

The Recommendations from 7.4.1.7include:

- Prepare (and allocate) a budget that reflect the actual needs of the CFD and allow for the fulfillment of the requirements stipulated in the LM, including sufficient provision for goods and services and Capex.

Recommendations (updated): While recognizing the importance of other key 'good governance' factors (capacity, efficient management, accountability etc.), **increase budget allocation** for government inspectors of the Commercial Forestry

Dept. to be enabled and motivated to fulfill their day-to-day control responsibilities in total independence and, in turn, contribute to effective government revenue collection (taxes, fees, fines).

Ensure effective follow-up from FDA Head office on field inspection reports issues. Together with operative means, support from top management is a key motivation factor for field staff.

FDA/IAWG response to the Main R&C in the Audit 3 report
Risk/ Issue: CFD not fulfilling day-to-day control responsibilities
Response: The FDA agrees that the CFD capacity was reduced due to transfer of inspectors to LVD. However, the CFD is recruiting additional staff and currently have 18 contracted inspectors. FDA acknowledges that additional resources are needed for the CFD to conduct inspections.
Mitigation Measure: The CFD is incrementally hiring staff to be assigned directly in the field (with active concessions)
Responsible Department: NAD-Commercial Dept.
Time Frame: 2019/2020 Fiscal year
Reference:
Remarks: 15 Forestry Training Institute (FTI) graduates have been hired

IA review of FDA/IAWG response:

- IA needed to assess the reality of the net increase in qualified staff, in both Head and Regional Offices. There have been additional staff for field operations: 6 full time and 14 on-contract inspectors have been appointed. VPASU also provided them with a week's training.
- However, field staff are not doing their inspections as confirmed by the Regional Manager in Region 3 – the largest and most active region in Liberia. Formal inspections are non-existent due to a "lack of resources". In that regard, the IA has not received evidence of significant improvements to the general lack of resources for the CFD to operate.
- Conclusion: Issue remains open as there is no improvement on the ground regarding the issue of CFD ability to control forestry operations in Liberia.
- FDA/IAWG response not addressing the lack of support from top management (follow-up from FDA HO on field inspection reports).
- Meanwhile, Issue HII 6 and Risk HR 4 (below) shall remain open

The analysis initiated under Audit 1 had led to the recording of both a **RISK** (ref. **HR 4**) and an **ISSUE** (**HII 6**) in the IA Progress Database, now updated as follows:

RISK HR 4
Impact level: High
Identified RISK factor: FDA field staff critically lacking resources, independence and management support
Identified RISK description: Demotivation; ineffective inspections, reporting and sanctioning
Recommendations: Increase budget allocation to CFD, including sufficient provision for goods and services and Capex allowing it to fulfill the LM requirements and contribute to government self-revenue generation. Ensure

effective follow-up and support from top management in FDA Head Office on field inspection reports issues.

ISSUE HII 6
Impact level: High;
Identified ISSUE: FDA Commercial Forestry Dept. in field and head office not fulfilling day-to-day field control (inspections, reporting, sanctioning, publishing) responsibilities
Recommendation: same as above.

7.4.1.5 Background to the following reviews

Previous investigations of FDA field inspections by the CFD raised issues that had been followed-up in Section 6.4.7 in the Audit 3 report (A3R) and have now been moved hereto for archiving.

7.4.1.6 The Commercial Forestry Department (CFD) on the FDA Organogram

The Commercial Forestry Department (CFD) is represented on the Organogram of the FDA (See **Annex 8.1**) as "Commercial Department", as it is also often referred to (both names are right, the IA was told):

- The CFD is among the five Departments (along with LVD, Conservation, Community and R&D) that have a direct reporting line to the Deputy Managing Director for Operations (DMDO);
- It is itself composed of:
  - The National Authorizing Division,
  - The EIA Division, and
  - The Marketing & Forecast Division.
- The National Authorizing Division has direct reports in the field, titled "Regional Forester Sector no. 1 to 4", which the IA assumes are the Regional Managers in the four Regional offices of the FDA.

The IA has so far had interaction with the CFD:

- at the FDA Head Office
  - with the Technical Manager, now Technical Director position of the CFD,
  - with the National Authorizing Officer at the National Authorizing Division (NAD), also referred to as the "Contract Administration Division", and
  - with the Manager, Forest Products / Marketing & Revenue Forecast.
- In the field, with Regional office staff in Region 3 (during Audits 1 and 4) and Region 4 (during Audit 2) who fulfilled the positions of "Regional Manager" (same as "Regional Forester"?), "District Forester, Contract Administrator", and "Inspector". A total of 10 Contract administrators were reported in the four FDA Regions. "Forest rangers" (assumedly also called "Inspectors") are reportedly in charge of stumpage and log data and tree data inspections.

The IA is also aware of the position of 'GIS Manager' (responsible for concession mapping) within the R&D Dept. And some references to the existence of a CoC Division within CFD have also been found.

For future attention: investigate the apparent issue (already registered below) about the absence of a clear organogram (organizational chart) for the Department.

The IA registered a new **ISSUE** (ref. **MII 17** in the IA Progress DB) about this:

ISSUE MII 17
Impact level: Medium
Identified ISSUE: Absence of a clear organogram for the Commercial Forestry Department (CFD) as a basis for quality management
Recommendation: Develop an organogram specific to the CFD.

7.4.1.7 Capacity analysis of the Commercial Forestry Department (CFD)

The matrix in the following table is the reporting structure that has been used during Audit 3 by the IA Field audit team leader to assess the respective criteria.

Capacity analysis	
Budget (Source: NATIONAL BUDGET, Fiscal Year 2018/2019 FOR THE PERIOD: JULY 1, 2018 TO JUNE 30, 2019 MFDP)	
2018/19 budget	Salaries: $483 180 Goods and services: $7 700 Capital expenditure: $- Total budget: $490 880
5-year budgets	2016/17: $445 774 2017/18: $506 819 2018/19: $490 880 2019/20: $489 263 2020/21: $488 229
Conclusion on budget	Goods and services as a % of the total budget: 1.6%. 2020/21 budget as a % of the 2016/17 budget: 109% (9% higher than in 2016/17. There is a totally insufficient provision of funds for the CFD in terms of Goods and services and Capex, leaving the CFD incapacitated to perform their functions according to the requirements stipulated in the VPA Legality Matrix (LM).
Staff	
Competency of inspectors	Inspectors have not been trained on LM and CFHP requirements
Number of staffs	10 Contract administrators in the 4 FDA Regions Forest rangers – stumpage and log data and tree data inspections
Goods and services	
Vehicles	Insufficient vehicles: 5 motorbikes
Fuel	Fuel is inconsistently supplied
Tools & Equipment	No measuring tapes provided. Some inspectors are issued with GPS – one per Region, shared with REDD+. However, no training has been provided for the use of the GPS. Rain gear and gumboots were last issued in 2017 – none issued in 2018 and supply not internalized.

	No PPE and uniforms. Diameter tape – yes. No clinometers.
Field accommodation	Field accommodation is not properly arranged for field inspectors.
Per diems paid	Inspectors are not consistently issued with DSA (Daily Subsistence Allowance). When FDA Head Office accommodates the field inspectors then per diems are sometimes issued.
Capital Expenditure (Capex)	
No Capex in the 2018/19 budget for the Commercial Forestry Department	
Performance level in conducting field inspections	
Schedule for field visits?	No formal schedule exists for field visits
Compliance with schedule	See above
Correct use of templates	CFHP inspection template exists, but is not used by inspectors.
Completeness of reports	See 5.4
Issuance of penalties	One penalty for ICC was issued in early 2018 for ICC for an amount of USD5000. This amount did meet the requirements stipulated in the Liberian Forest Sector Compliance and Enforcement Handbook (First Edition) dated 31 August 2017.
Payment penalties	In general, no penalties are being issued for non-compliances by the whole of FDA.
Closure of corrective actions	The one fine that was issued was paid by the operator and the logs were subsequently exported. No other fines have been issued over the last years.
Overall conclusion	
Although some templates exist within the CFD to fulfill their responsibilities as outlined in the LM of the VPA, the following constraints have been identified: ▪ Total budget is totally insufficient. ▪ Good and services budget is grossly inadequate for the current financial year at 1.6% of the total CFD budget. ▪ No Capex budget has been included in the current budget year. ▪ Current support for existing field staff virtually nonexistent.	
Recommendations	
The following recommendations follow from the conclusions drawn regarding the functionality of the CFD: ▪ Prepare a budget that reflect the actual needs of the CFD and allow for the fulfillment of the requirements stipulated in the LM, including sufficient provision for goods and services and Capex requirements. ▪ Prepare procedures for the functions of the CFD for inspections and for the annual audit. ▪ Prepare reporting templates for ongoing inspections and auditing checklists as well as report templates for the annual FDA audit.	

7.4.2 Implementation of the role of Government, the Community Forestry Department (CyFD) of the FDA

7.4.2.1 The Community Forestry Department (CyFD) on the FDA Organogram

The Community Forestry Department (CyFD) is represented on the Organogram of the FDA (See **Annex 8.1**) as "Community Department", as it is also often referred to (for further attention: the IA is yet to find evidence which name is right):

- The CyFD is among the five Departments (along with LVD, Commercial, Conservation, and R&D) that have a direct reporting line to the Deputy Managing Director for Operations (DMDO);
- It is itself composed of:
  - The Forest Extension Division, and
  - The Community Empowerment Division.
- The Department and its Divisions show no direct reports in the field (in the Regional offices of the FDA).

The IA has so far had limited interaction with the CyFD:

- At the FDA Head Office, with the Technical Director of the CyFD, and
- In the field, with a Community Extension officer in Region 4 (See 7.4.1.4).

7.4.2.2 Capacity analysis of the Community Forestry Department (CyFD)

Like for the CFD, the following table is the reporting structure that the IA Field audit team leader has used during Audit 3 to assess the respective criteria.

Capacity analysis	
Budget (Source: NATIONAL BUDGET, Fiscal Year 2018/2019 FOR THE PERIOD: JULY 1, 2018 TO JUNE 30, 2019 MFDP)	
2018/19 budget	Salaries: $139 304 Goods and services: $8 158 Capital expenditure: $- Total budget: $147 462
3-year budget forecast	2016/17: $60 576 2017/18: $21 973 2018/19: $8 158 2019/20: $6 445 2020/21: $5 349
Conclusion on budget	Goods and services as a % of the total budget: 5.9% 2020/21 budget as a % of the 2016/17 budget: 8.8% There is a totally insufficient provision of funds for the Community Forestry Dept., leaving the department incapacitated to perform their functions according to the requirements stipulated in the Legality Matrix (LM).
Staff	
Competency of inspectors	Not all Inspectors have been trained to fulfill the requirements of LM Indicators 2.1 and 3.4.
Number of staffs	22 persons – 9 in central and 13 infield.
Goods and services	
Vehicles	No vehicles

Fuel	No fuel
Tools & Equipment	No PPE and other equipment supplied. No cameras.
Field accommodation	No support provided to field officers to do their fieldwork.
Per diems paid	No DSA paid to field staff to complete their inspections when they are required to sleep away from home.
Capital Expenditure (Capex)	
	N/A
Performance level in conducting field inspections	
Schedule for field visits?	Ad hoc
Compliance with schedule	No schedule is available for field inspections by officers to verify compliance with Indicators 2.1 and 3.4 in the LM.
Correct use of templates	OK
Completeness of reports	Not part of this audit
Issuance of penalties	No evidence of recommendations for penalties exists from FDA for transgressions relating to LM Indicators 2.1, 3.4 and 3.5.
Payment of penalties	No penalties - See above
Closure of corrective actions	No penalties - See above

Overall conclusion

Although some templates exist within the CyFD to fulfill responsibilities outlined in the LM of the VPA*, the critical following constraints have been identified:

- Total budget is insufficient and, though possibly meaningless, shows a downward trend over the 5-year period reported in the 2018/19 government budget
- Good and services budget grossly inadequate for the current financial year at 5.9% of the total Community Forestry Department budget.
- No Capex budget has been included in the current budget year.
- Current support for existing field staff is virtually nonexistent.

Without proper means to operate, the other issues (e.g. no field inspection schedule available, no evidence of recommendations for penalties) are contingent.

* Responsibility for enforcement of social obligations towards communities, though, is not clearly assigned.

Recommendations

The following recommendations follow from the conclusions drawn regarding the functionality of the Community Forestry Department (CyFD):

- Prepare a budget that reflect the actual needs of the CyFD and allows for the fulfillment of the requirements stipulated in the LM, including sufficient provision for Goods and services and Capex.
- Prepare procedures for the functions of the CyFD related to FMCs and TSCs and to penalties.
- Responsibility for enforcement of social obligations towards communities

must be clearly assigned.

The IA registered a new **ISSUE** (ref. **HII 28** in the IA Progress DB) furing Audit 3:

ISSUE HII 28
Impact level: High
Identified ISSUE description: Insufficient budget for CyFD and still decreasing, including only 6% for Goods & services and no Capex. Without proper means for field staff to operate, the other issues are contingent
Recommendation: Prepare a budget that reflect the actual needs of the CyFD and allows for the fulfillment of the requirements stipulated in the LM, including sufficient provision for Goods and services and Capex.

7.4.3 Approval of Forest Management operations (LM P4) - Pre-felling requirements

7.4.3.1 Approval of a Community Forest Management Plan in a CFMA

Useful references in the previous Audit 3 report: 6.2.4.1, where this review was considered mostly completed. It has been followed-up on during Audit 4 as follows.

During the Audit 2, the following came to light during stakeholder consultation:

- Community Forest Management Agreement (CFMA) management plans correspond to Commercial Activities on Community Forest Lands, according to the Community Resource Law, Section 6.2: “A community may enter Medium-Scale Commercial use on Community Forest Land ranging from 5,001 to 49,999.99 hectares”.
- The National Forestry Reform Law (NFRL) of 2006 states in Section 8.2a Sustainable Management of Forest Resources: “the Authority [FDA] shall monitor Forest Lands to ensure that all use, harvest, and transport of Forest Resources is lawful and based on a sustainable yield, as established by Regulation of the Authority”.
- CFMA “X”’s 15-year management plan was approved by FDA on May 31, 2017 based on PROSPED/USAID Project guidelines for 15-years, which does not follow the basic requirements of the “Guidelines for Forest Management Planning in Liberia of July 2009” that are designed for a 25-year cycle. There are no specific guidelines for Community Forestry that would contradict the former provision.
- Section 8.2 of the Community Rights Law (CRL) Regulation Amended in 2017 states that “A community forest management plan shall be in effect for the duration of the CFMA”. *This is the clause in which the existing 15-year management plan, and by inference the 15-year cutting cycle, are based on*. However, this clause does not explicitly authorize the use of a 15-year cutting cycle, which contradicts a basic forestry ‘sustainable yield’ principle, called for in the NFRL (Section 5.3e (i), (ii)) on which the 25-year cycle being applied to FMC is based on for Liberia. In neighboring Ghana with similar natural forest, the cutting cycle is 40 years, in recognition of the slow forest growth and to ensure sustainable yield.

- Moreover, the CRL states in Section 3.2a – Community Responsibilities: "Communities have the responsibility for managing community forest resources in an environmentally sustainable manner under regulations and guidelines issued by the Authority".
- CRL Regulation Amended May 2017, Section 10.3 for Medium-Scale Commercial Activities states: "…Community Forest Management Plan, which shall in turn comply with all relevant provisions of the National Forestry Reform Law of 2006, the Ten Core Regulations, the regulation on chainsaw milling, the Code of Forest Harvesting Practices, the Forest Management Guidelines, and all other relevant laws and regulations".

Conclusion:

By using a 15-year cutting cycle, the FDA Community Department is in contradiction with the requirements stipulated in the following documents:

- NFRL Section 5.3e. (i), (ii);
- Regulation 105-07 Section 51;
- The Forest Management planning guidelines and
- The Liberian Forest Harvest Code of practice.

The only way a 15-year cutting cycle can be justified from a sustainability point of view is by increasing the minimum cutting diameter per species, with the new proposed diameter based on credible and scientific studies.

Conclusion: FDA approved a CFMA management plan based on a 15-year cutting cycle in contradiction with Liberian Law and sustainable forest management planning guidelines.

FDA/IAWG response to the Main R&C in the Audit 3 report

This is correct, however this is result of an unintentionally misinterpetation of the length of the cutting cycle (25 years) verses the CFMA contract term required by the law (15 years) [CRL Regulations, Section 6]. The FDA is working with the Ministry of Justice to standardize the cycle for all commercial operations with the FMC's 25 year cutting cycle. The 15 years felling cycle in the Community Rights Law is under review.

Mitigation Measure: The technical committee is to revisit the cutting circle of CFMA to regularize the standard inline with sustainable forest management.

Responsible Department: Commercial /Community departments; Ministry of Justice

Time Frame: Before the 9th JIC in 2020

Reference: Updated Legality Matrix

Remarks: The Updated Legality Matrix approved in 8th JIC and tested before the 9th JIC

IA review of FDA/IAWG response:

- The IA needed to confirm the current 15-year cutting cycle in the CRL and validate the intended corrective action to review it and align it on FMC's 25-year rotation.
- IA Response: There is no such "15 years felling cycle in the CRL [to] review": neither the CRL nor the CRL Regulations or the Nine Steps Handbook mention

the felling/cutting cycle. IA is in continued discussions with the CyFD to establish the exact circumstances on the ground.

- Conclusion: Meanwhile, Issue HII 17 shall remain open.

The IA raised an **ISSUE** (ref. **HII 17**) in the IA Progress DB about this, now revised as follows:

ISSUE HII 17
Impact level: High
Identified ISSUE: FDA approved a CFMA management plan based on a 15-year cutting cycle in contradiction with the Law
Recommendation: Reconsider approval of CFMA management plan(s) on such unlawful and unsustainable basis. Align the cutting cycle in CFMAs with that of FMCs (25 years) in accordance with the sustainable forest management regulations of Liberia.

7.4.3.2 Approval of Annual Operation Plan (AOP) in a CFMA

Useful references in the previous Audit 3 report: 6.5.1, where this review was considered mostly completed. It has been followed-up on during Audit 4 as follows.

The IA was provided with evidence (copy of letter dated **17.12.2017**[80]) that the MD of the FDA approved the 2017/2018 Annual Operation Plan (AOP) No.01 of a CFMA[81] submitted by the Technical Committee on AOP Review (on **30.10.2017**) through the Technical Manager of the FDA CFD *after felling took place*: Felling form No. 2017/001817 dated 14.12.2017 that mentions Annual Coupe 09.05.2017-09.05.2018 (read 05.09.2017-05.09.2018), Felling From Date 09.28.2017 (read 28.09.2017), To Date 10.07.2017 (read **07.10.2017**) in Block Q9.

So the dates of both the 1) submission of the AOP (30.10.2017) and 2) approval of the AOP (17.12.2017) are posterior to both the beginning date of the Annual Coupe (05.09.2017) and the end date of the felling (07.10.2017).

The IA raised an **ISSUE** (ref. **HII 1**) in the IA Progress DB for follow-up about this:

ISSUE HII 1
Impact level: High
Identified ISSUE: Annual Operation Plan (AOP) and Annual coupe approved after felling took place (non-conformity by FDA)
Recommendation: Do not allow felling to take place before approval of AOP/Annual coupe.

FDA/IAWG response to the Main R&C in the Audit 3 report:

FDA recognizes that there has been incidences of this happening. However, the Government is taking corrective action to ensure this does not happen. The process required by FDA and is currently enforced is that Blocks within the Annual Operation Plan (AOP) are inspected by the LVD and uploaded into the LiberTrace before the AOP is approved and Harvesting Certificate is issued, having met all the pre-felling requirements.

[80] Reads as "dd.mm.yyyy" for day, month, and year
[81] Name kept confidential.

Mitigation Measure: Forest Management Guidelines are followed.

Responsible Department: NAD-Commercial Dept.

Time Frame: Annually

Reference: MD/158/2017/-2

Remarks: The procedures of pre-felling requirements were followed and need additional training

IA review of FDA/IAWG response:

- IA notes that FDA recognized that there has been incidences of this happening. FDA also stated the Government is taking corrective action to ensure this does not happen, and Forest Management Guidelines are being followed, subject to additional training.
- Is the process described in the response the correct one ("*that Blocks within the Annual Operation Plan (AOP) are inspected by the LVD and uploaded into the LiberTrace before the AOP is approved and Harvesting Certificate is issued, having met all the pre-felling requirements"*), and is this what the Forest Management Guidelines prescribe (ref. Mitigation Measure)?
- How do we assess whether "the Government is taking corrective action to ensure this does not happen"?
- Is the Remark correct that *"The procedures of pre-felling requirements were followed"?*
- Is the need for additional training a valid excuse? And a recommendable Mitigation Measure? Any other recommendation?
- The feedback given by FDA is not aligned with the Legality Matrix which states specifically that the inspections are the responsibility of the Legality Verification Department (LVD). Currently the Commercial Department (CFD) remains inactive to a large degree and their responsibilities are progressively being transferred to the LVD. There are clear lines as to what the responsibilities are of the CFD and those that need to be taken up by the LVD inspectors and the LVD auditors.
- Current problems with AOPs:
  - Operators are still not completing their enumerations of the upcoming logging year during the precious logging year, making it difficult, if not impossible for LVD to do the necessary checks prior to the commencement of the logging season.
  - Operators are not all submitting their AOPs prior to the cut-off date of September 30.
  - LVD is approving blocks on a piecemeal basis for harvesting.
  - The harvesting permit is thus still not issued by CFD based on a properly completed Harvesting permit, meeting the requirements stated in CFHP, SOPs, Management planning guidelines and Liberian laws and regulations.
- Conclusion: Logging in Liberia thus continues to be illegal.

- Issue HII 1 remains open.

Note: The above review is still at draft stage by the IA Field Audit Team Leader.

7.4.4 Social Obligations and Benefit Sharing (LM P3)

This new section has been created to receive the reviews initiated during Audit 4 in 6.5.2 (Implementation of social agreements with communities) once completed.

7.4.5 Implementation of the role of Government, Establishment and functioning of the LVD

7.4.5.1 Background

As introduced in 7.3.2.2 in this A4R Vol.2 (under 7.3.2 'Annex II - Introduction of Legality verification in the VPA'), the Legality Verification Department (LVD) is one of the two new responsible government bodies designated by the VPA for legality verification under the VPA Ann. II, 1d4 and established pursuant to Ann. II, 3.1a.

On April 06, 2018 the IA held an auditing meeting of the LVD of FDA with SGS Liberia staff at the SGS Office.

It was recalled that, at the time, SGS had 2 current contracts (See next chapter for the scope):

- A EU-UK DFID contract, reporting to DFID;
- A Service agreement (GoL contract), reporting to FDA; a continuation from the historical SGS contract.

The IA Team required cooperation from SGS to provide the requested information and from SGS staff in face-to-face audit meetings to discuss the following topics among others:

- Contractual milestones, deliverables and schedules;
- Agreed project plans and updates;
- Progress reports reflecting commitments, including handover,

in relation to the following issues:

- Detailed information on the current establishment of the LVD (organogram, infrastructure, staff, equipment, budget, financing);
- Establishment and functioning of the Auditing section of the LVD (including procedures, training, and competencies of auditors);
- Establishment and functioning of the CoC Inspection section of the LVD (including procedures, training, and competencies of inspectors) - To include the development of SOPs since the VPA was signed (which the IA is linking to the VPA requirements from the Annex II under 7.3.8.1);
- Functionality of LiberTrace (Traceability, Fiscality and Legality) - To cover the Export Permit issuance process;
- Level and accuracy of the population of LiberTrace with relevant data.

The IA also intended to follow up from the results of the previous audits and to address outstanding issues.

SGS/LVD monthly reports

Reporting by SGS until April 2018 had apparently included:

- Monthly CoC reports, Revenue reports, and Market reports (reportedly available on the FDA website; plus on SGS Liberia ShareFile to which the IA has been given access, like to all stakeholders);

- Quarterly progress reports to DFID;
- IT progress report;
- CB Implementation Plan V2 Dec16;
- Detailed Handover Plan;
- Go live report;
- Change management in CB assessment.

However, the list of SGS reports on the FDA Website (at http://www.fda.gov.lr/vpa-flegt/old-documents/) had not been updated since 2016. The other 'http://www.fda.gov.lr/vpa-flegt/sgs-liberia-reports/' page was empty either.

According to SGS' contract, SGS would not prepare any more COC, Revenue and Market reports for DFID, nor their aggregation in one single report under the GoL Service Agreement, after the last one(s) for March 2019. The LVD would be responsible for issuing this monthly report going forward; LVD staff has been trained for it.

From December 2018 on, the IA was thus informed that the LVD monthly reports would be accessible from the public News section in LiberTrace. These included the (formerly separate) CoC, Revenue and Market reports as Sections 1, 2 & 3 now assembled in one single report, named "SA Service Agreement Monthly Performance Report [YYYY] [Month].pdf".

7.4.5.2 Establishment of the LVD, SGS contract as Service provider, and handover process to LVD

Status: Review completed; now moved partially to 7.4.3.1 in this A4R Vol.2 for archiving.

Issue being discussed: Current establishment of the LVD (organogram, infrastructure, staff, equipment, budget, financing) as of April 2018.

In the absence of information on contractual obligations and plans (which it was agreed the IA would ask for on an *ad hoc* basis to address specific questions rather than as one long list of documents - which the IA requested but only very partially obtained), the information collected is merely descriptive.

LVD structure

As per 7.3.8.1, the LVD of FDA fulfills three main functions:

1. **COCIS maintenance (LiberTrace)** that will contain the following data sets:
   a. The Traceability (COC) data
   b. Legal documents used to confirm compliance with the LM requirements*
   c. Legality Audit Data/information.

   * Note for future attention, verification and testing: the statement that LiberTrace manages some compulsory documents as per b. above (Legal documents used to confirm compliance with the LM requirements).

   ** Note for future attention, verification and testing: that LiberTrace manages Legality Audit Data/information as per c. above. Follow-up on email exchange with SGS "RE: Libertrace access": The IA Field audit team leader wanted "to review the way in which Libertrace presents auditing information (not the CoC part of the program) and therefore need to have the appropriate access".

2. **Field inspections** for forest contract holders' compliance with:
   a. The Chain of Custody System (COCS) i.e. Traceability

b. The forest management and harvesting requirement of the Legality Matrix (i.e. Principle 4 of the Matrix)

3. **Audit of VPA implementation** and compliance by the other VPA implementing partners with their obligations as specified in the Legality Matrix.

The following table shows the IA's understanding of how the different mandates of SGS intersected with the LVD functions, up to **October 13, 2018**.

Table 11: History of SGS' mandates up to October 13, 2018

SGS' mandates: → LVD functions*	**"LiberFor" Service Agreement with GoL (**a.k.a. "Side Agreement")		**EU-UK DFID contract**	
	Use/Supply, Support & Maintenance of COCIS hardware and software; Hosting of S/W & data servers	COCS management and tax collection	Use/Supply, Support & Maintenance of COCIS hardware and software; Hosting of S/W & data servers	On a BOT basis, establish LVD within FDA for the first 5 years, to develop the verification methodology and build the capacity of the LVD and other FDA divisions involved in LAS implementation
LiberFor software (Supplier: Helveta Ltd.)	✓ 2008-2013			
LiberTrack software (Supplier: local developer)	✓ 2013-2017			
LiberTrace software (Supplier: SGS SA, Geneva)			✓ 2013-2018: S/W development and upgrading/enhancement 2017-to date: used by SGS/LVD until H/W and IP rights to S/W (under a Licensing agreement) are transferred to GoL at end of (extended) contract	
Data management in COCIS		✓ 2013-2018 Equipment transferred to GoL at end of contract		✓ 2013-2018: LVD HO + Regions' capacity building and handover; Data validation post-handover to Regions, at LVD HO

Operations/COC inspections		✓ 2013-2018 Equipment transferred to GoL at end of contract		✓ 2013-2018: LVD HO + Regions' capacity building and handover
Legality audits		✓ 2013-2018 Equipment transferred to GoL at end of contract		✓ 2013-2018: LVD HO capacity building and handover

Extract from the 7th JIC (Feb. 25 - March 1, 2019) Aide-memoire:

Liber Trace demonstration and sustainability scenario

27. The LVD gave a demonstration of LiberTrace and the range of the system's features. EFI presented a status update on the LiberTrace IT assessment. During that session, it was highlighted that the expected dates for LiberTrace handover of the servers are at the end of May and that SGS will provide IT support until the end of their contract. Preliminary results surrounding the LiberTrace, shows that the software is fit and ready for handover even though some aspects of the LiberTrace could be improved for efficiency purposes. The study also outlined potential solutions in terms of hosting and highlighted that a plan of implementation needs to be drafted and implemented. If an alternative hosting solution cannot be secured by handover, the study further recommended finding interim solutions. The study will be submitted to the GOL and the EU in March and after review the GOL will decide on next steps.

28. During the session on "Best and Worst case sustainability scenario - LiberTrace post-handover", presented by the Ministry of Finance and Development Planning (MFDP), it was highlighted that in order to ensure that LiberTrace is sustained after the SGS handover, it is important to look at multiple elements such as the institutional arrangements, plans and available technology. As exemplified by other management information services in the government, good practice for LiberTrace should focus on strengthening capacity and a cross-institutional approach to leverage expertise. It would not benefit the government to focus on short-term revenue generation or to experiment with alternative systems that have not been tested.

29. The representative from the MFDP also explained that it is always beneficial for such systems to be supported by a team of people engaged in different government institutions, including the FDA.

LVD sites (offices) and organogram

As also mentioned in 7.3.8.1, SGS provided the IA with a document[82] that describes the respective organizational charts of the LVD offices, being:

- The FDA/LVD **Head Office** (HO) in **Monrovia**; and

[82] 171207_LVD Organizational charts_FDA_LVD.pdf

- Three **Regional Offices** based in **Monrovia HO (**Regions 1&2 offices; will stay there), **Buchanan (**Region 3 office**)** and **Greenville** (future Region 4 office planned).

The charts, showing SGS/LVD in the context of the handover process, reflect **three sections** corresponding to the three functions of the LVD (excepting the Quality Management function):

- **Data management;**
- **Operations/COC**;
- **Auditing**.

Key roles of the 3 sections: reportedly described in a 'Handover assessment report', covering the entire project, to be obtained from DFID (acc. to SGS PM).

LVD staff in Monrovia HO and Regions

- The LVD Technical Manager;
- Support services' staff (Invoice Processing Coordinator, Finance Officer, Quality Manager);
- Two SGS (SGS Liberia Inc.) managers (LVD Project manager; Forestry Project Coordinator, LAS Team Leader); not showing on the LVD organizational chart;
- SGS staff also including the "LVD – Capacity building team leader".

The three sections are placed under the respective management lines of the following positions, with the following staff:

- The **Operations/COC Manager**, who supervises teams of LVD Lead Inspectors, Inspectors (18 currently in total), and (3-4) Drivers in all the LVD Regional Offices (Monrovia, Buchanan and Greenville);
- The **Database Information Manager (DIM)**, who supervises a Helpdesk officer in the LVD HO and teams of 12 COC/LV Data clerks in all the LVD Regional Offices and 1 assistant (Office Clerk);
- The Legality Verification (**LV) Lead Auditor** (Audit Team leader), who supervises a team of LVD Auditors, all based at the FDA HO.

Job descriptions: pending to be received from the SGS PM (for further attention).

LVD equipment (vehicles, computers, other?) and division between 'DFID contract' and 'Service agreement with GoL': information reportedly available in the 'Region 3 assessment report' and other reports.

SGS/FDA co-management (until Oct. 2018):

- There were two DIMs, both reporting to the SGS LAS Team Leader, one for SGS (higher level of approval, capacity building) and one for LVD (same level on paper, then only one, post-handover, reporting to the LVD Technical Manager);
- Likewise, for two Operations managers (LVD/SGS);
- Actually, the SGS managers (LVD Project manager; Forestry Project Coordinator, LAS Team Leader) appeared to still have the main lead on the working of the LVD while the LVD Technical Manager was not yet up to speed with its roles and functions as per the LVD procedures. Division of responsibilities during the interim period: see handover plan?
- SGS is not a LIC member, but are regular presenters on the multi-stakeholder JIC sessions.

Main outputs: Export permits (EPs), Certificates of origin (COs), Fee invoices (Land rental, Contract admin, Export, Stumpage fees).

Capacity handover process (as of Oct. 2018):

- Plans included transfer to LVD (initially by 05/2018) of Regions 1-2, 3, 4 + HO. Post-transfer, SGS is due to then monitor up to end of contract. Nothing was envisaged thereafter. It was felt SGS's current management capacity could be used for further monitoring.
  (June 19, 2017 meeting with SGS PM)
- Region 3 officially (SGS's CoC staff) transferred.
- But SGS was still paying the Opex (currently until end of June 2019, fiscal year) for LVD: 12 CoC inspectors, 2 drivers, 2 data clerks. Then the Opex budget should be financed by MFDP.
- Payment of salaries is said to be on course (not at same level as under SGS, though – How has this been formalized in advance?).
- LVD's capacity to receive /absorb transfer as beneficiary must be questioned and assessed, with appropriate tools to measure it.
  (June 19, 2017 meeting with SGS PM)
- The political will that the system worked is not lacking. However, decision makers may be more attracted by well-funded conservation projects (REDD+/ World Bank under Norway Gov't funding).
  (June 19, 2017 meeting with SGS PM)
- Operating independently of SGS' support:
  - Is regarded as a potential cost-saving opportunity by the FDA. SGS had several months of outstanding invoices. However, FDA's revenue-generation capacity is questioned, inclusively by the LRA.
  - There have been suggestions that LRA should double-check payments with SGS to address risks (Discussion now moved to A4R Vol.1, 6.2.6.3).

    Follow-up during Audit 3:

    SGS/LVD Manager no longer sees what this last point referred to (unreliable proofs of payment maybe?). The revenue collection process is not described in an LVD SOP because it is temporary. LRA was supposed to issue an instruction to describe the process.
  - Buyers in some destination countries buy unproved legal timber, but at very low prices (including internal transfer prices to transfer benefits off-shore). It is unclear what the new [Liberian] Government will do, in terms of "Exploitation vs. Conservation" (and whether to align compliance in the Liberian forest sector with international requirements for legal timber, such as the EUTR);
  - The [LiberTrace] system is ready, but energy is needed to make it work. The idea is to involve:

    1) the operators more (to do more to update the situation of the file and do it right to avoid blocking the system)*; and

    2) the management (to challenge the status quo of copy-paste by inspectors on operators' data)**

** Further investigation during Audit 3 regarding the above Point 1:*
Now covered under 6.4.11 (…Incorrect information loaded on LiberTrace)

*** Further investigation during Audit 4 regarding the above Point 2:*
Now covered under 6.2.3.7 (CoC data quality issues due to copy-paste of operators' data in LiberTrace) in the Volume 1 of this Audit 4 report.

Relevant extract from the 6th JIC meeting (June 13-14, 2018) Aide-memoire:

LVD and Upcoming Handover from SGS

17. ... The LVD highlighted that **adequate budgetary support from the GoL** for their operations is the primary limitation around the handover to LVD from SGS.

18. An independent consultant presented the structure of the **independent assessment of the FDA-LVD readiness to take over from SGS**. The draft of the assessment report was circulated to GoL shortly before the JIC. It scored against several areas: systems in place, resources available, FDA capacity, and future direction. FDA voiced its disappointment at the fact that the assessment report did not look at why after so many years of support by SGS and progress in building the system (legal framework, capacity-building), the full necessary capacity had still not been built.

19. The timing of this assessment report review is critical because, as the EU highlighted in its presentation on EU and DFID support timeframes, the **VPA implementation support projects** end in September and October 2018. The EU stressed the importance of the GoL's decision on how they wish to proceed on SGS contracting. Such decision needs to be made soon in order for the EU and DFID to mobilize funds and start with the extension process and avoid gaps in support.

20. The EU further expressed that it makes little sense to have a **support contract on legality verification** if the GoL does not have a **parallel agreement with SGS on chain of custody system and tax collection**. This is why if the side agreement between the GoL and SGS is not approved, the EU and DFID will need to readjust the timeframes and the scope of their support.

21. FDA MD responded that with the funds used to pay SGS, the GoL could take over some of the Chain of Custody functions. The FDA clarified that the LVD does not need to take over all functions overnight but a step-by-step approach is advisable to allow the LVD to take over gradually from SGS. **Some functions could remain within the scope of SGS** and others could be given to the LVD. The MD suggested further investigation on this possibility.

22. The GoL agreed to start a consultative process and present their **decision on the SGS handover/ contract/ side agreement** by July 6, 2018.

23. On this matter, the LTA raised concern that if **SGS, or any other company with a similar international reputation, is no longer a part of the verification process** in Liberia, logging companies would lose significant market share, as the EU and US market will be less likely to accept Liberian timber and Liberia would become even more dependent on other lower-value markets for its exports. LTA highlighted that this could mean that a decision to take SGS out of verification completely, could have a negative impact on the Liberian commercial forest sector.

24. FDA and LRA raised concerns on **how LiberTrace (software) will be managed after the handover**, as the system maintenance is still based in Geneva. The LVD indicated that they will prepare a formal request to FDA for its data manager to be trained by SGS in system management in Geneva. LRA additionally noted that the GoL needs to know the cost of owning and maintaining LiberTrace. Such cost-analysis will inform the GoL in determining what is financially sustainable in the long term and what are the options for management of the software. SGS clarified that the GoL will have access to the source code. It is up to the GoL to hire outside support or establish an internal department to manage LiberTrace and its future development.

Follow-up on this issue of LiberTrace with LRA, during Audit 4:

- Decisions need to be firmed up.
- To be hosted locally (by LRA, if costs for LRA are met with, as part of the LVD budget). Or LibTeCo (Liberia Telecom). Back-up in the Cloud.
- SGS will still be responsible for upgrades.
- Side agreement lapses Oct 31st [2019]: hoping negotiation to be concluded.

Extract from the 7th JIC (Feb. 25 - March 1, 2019) Aide-memoire:

<u>The Liberia Verification Department (LVD) and Upcoming Handover from SGS</u>

22. The Legality Verification Department (LVD) at FDA provided an **update on the status of its operations** including the **current financial mechanism and key challenges**. SGS also provided a brief overview on progress made around their support to the Government, and key challenges. EFI also gave an update on the "Status of the Independent GOL-LVD Readiness Assessment" conducted by the appointed consultants. The draft readiness assessment will be submitted to GOL in March.

Following the presentations, the FDA highlighted the **need to maintain third-party monitoring** and that urgent discussions were needed internally. The EU expressed its support for such discussions. The FDA agreed to convene the relevant government agencies to reflect on the findings of the readiness assessment and to decide on next steps after the end of the SGS contract.

23. At the time of this JIC, USD 570 000 has been approved by the FDA Board to cover the operations of the LVD for the period 1 October 2018 to 30 September 2019. A clear structure has been established within FDA to govern LVD expenditure. In terms of staffing, 59 staff members have been assigned to the LVD covering 4 regions. To date 12 staff members have been transferred from SGS to LVD. Current operational challenges relate to the delay in the signature of the Central Bank of Liberia on the transitory account, Memorandum of Understanding (MOU), which has made it difficult for LVD staff to undertake their field verifications. However, FDA indicated that they are in the process of securing **funding** from its central budget to overcome these temporary difficulties.

The EU reinforced the **importance of the LVD´s ability to operate in a financially independent way** in order to maintain its integrity and credibility.

24. The LVD presented on the **process and methodology followed in conducting its work and field verifications**. The presentation included the process of scheduling and conducting LVD audits and collecting objective evidence

to inform its findings. The presentation also extended to cover Corrective Action Request raised and the closure of such findings.

25. SGS provided the meeting with a brief **update on the status of the LVD** covering aspects such as institutional governance, organization and staff management, equipment, performance monitoring. In terms of **challenges**, SGS highlighted the need to establish a code of conduct and integrity protocol for LVD, the need for effective monitoring of field activities, as well as the need to ensure that a culture of timely equipment maintenance is fostered among LVD staff. SGS also mentioned that there is a lack of recognition of the LVD within the larger Government, as an entity entitled to request documentation from other Ministries, Agencies and Commissions. SGS was of the view that the LVD has sufficient capacity to independently run the department from July 2019 and that the Head Office can be taken over from March 2019. The FDA anticipates that this will be reflected in the upcoming independent readiness assessment report.

26. SGS also emphasized the **importance of participation from all relevant Ministries, Agencies and Commissions** in the legality matrix and verification system. There are coordination and communication challenges in this process. In order to advance with VPA implementation, engaging institutions such as the Environmental Protection Agency (EPA) and the Ministry of Labor (MoL) is necessary, in order to better understand what type of controls they do and how this could be better reflected in the LM. Both parties noted this concern and formally invite the EPA and the MoL to join the JIC and the Liberia Implementation Committee as a way to support increased engagement on their part. The EU expressed interest in a deeper analysis of the difficulties expressed by SGS/LVD, since the presentation given anticipates obstacles for the LVD's future work once SGS´ contract ends.

7.4.6 Performance of the Legality Verification Department (LVD)

7.4.6.1 Standard operating procedures (SOPs)

Useful references

- In the Audit 3 report (A3R): 7.4.3.1, where this and the following sections included material that was initially located in Chapters 6.1.9.1 (COCS SOPs), 6.2.1.3 (CFD in the LM), 6.4.1.2 (LVD, Auditing section documentation) and 7.3.5.8 (What it takes to make an implementing text binding) in A3R;
- The '**Review of the Manual of procedures for LVD staffs**' was considered completed in the Audit 2 report and so it was moved from 6.2.3.3 thereto in A3R;
- Also in the Audit 2 report: 6.2.1.3, 7.2.1.

As part of Audit 2, the LVD procedures were reviewed for accuracy and the level of implementation in the field.

The CoC procedures are contained in two sets of documents, one for use by the LVD staff and one for use by the forestry operators.

It was decided to select the Manual of Procedures for LVD staffs (July 2016) for review[83], as it relates directly to the functions and responsibilities of the LVD. Evidence was gathered through interviews with various LVD staff, but mainly

[83] The Manual has since then been updated two or three times on 06/05/2018 and 07/15/2018 and again on 07.17.2018 but this was posterior to this IA Audit 2 and not formally approved.

through discussions with the LVD manager (SGS Forestry Project Coordinator - LVD-LAS Team Leader) in relation mostly to CoC (for auditing, see 7.4.6.3 below).

The Manual of Procedures for LVD staffs consists of 34 chapters (however there is no Chapter 21 in the document) and 156 pages. Each chapter was reviewed in terms of meeting one of the following categories:

- Chapter is "compliant" (i.e. both implemented and accurate);
- Chapter is non-compliant (with reason given):
  - Chapter implemented, but non-compliant due to inaccuracies;
  - Chapter not yet being implemented in the field;
- Chapter not checked during this audit.

The full results of the audit are contained as **Annex 8.4** (Review of the Manual of procedures for LVD staffs) in this report. However, a summary is given below of the information:

	Number	*Percent*
Compliant	**7**	**23**
Non-compliant	**24**	**77**
'- Incorrect	14	45
'- Not implemented	10	32
Checked	**31**	**100%**
Not checked	3	9
Total	34	

Out of 31 chapters checked in the Manual, 24 (77%) were found to be "non-compliant" due to inaccuracies (45%) or to not yet being implemented in the field (32%).

Conclusion(s):

The Manual of Procedures for LVD staffs (July 2016) shows a number of serious issues in some of its chapters, as showed in Annex 8.4 to this report, due to either incorrect information or lack of implementation in the field.

Recommendations:

The Manual of Procedures for LVD staffs (updated version) must be revised and the procedures must be implemented in the field.

The IA raised an **ISSUE** (ref. **HII 15**) in the IA Progress DB about this:

ISSUE HII 15
Impact level: High
Identified ISSUE: Problems with CoC procedures for LVD Staffs re: accuracy &/or level of implementation in the field
Recommendation(s): The Manual for LVD staffs (updated) must be revised and the procedures implemented in the field.

The extent to which the updated SOPs (once officially approved) address the gaps identified above will need to be assessed. Other problems with the COCS SOPs have been observed during Audit 4 (See 6.2.3.8 in Vol.1, Field audit in Gbarnga).

7.4.6.2 The LVD auditing section (as of April 2018)

Useful references

- In the Audit 3 report (A3R): 6.2.3.4, 7.3.11.2;
- In the Audit 2 report: 6.2.1.4.

During Audit 2 LVD auditor qualifications and related procedures were reviewed (as of April 2018).

The auditing of implementation and compliance by the other VPA implementing partners with their obligations as specified in the Legality Matrix (LM) is one of the three main functions that the LVD of FDA fulfills. It leads the LVD to conduct field audits on the inspections/ audits implemented by other departments (FDA, MoL, EPA) against the requirements of the LM.

LVD auditing section staff

The Auditing section of the LVD is composed of a team of auditors based at the FDA Head office near Monrovia (like the rest of the LVD and other FDA inspectors) and managed by the SGS/LVD Legality Verification Lead Auditor (Audit Team leader).

- 5 auditors in total;
- 3 seconded to SGS from FDA (remain FDA staff);
- 2 SGS employees, to be transferred to FDA LVD (this was imminent), including the Team leader (TL);
- The TL currently reports to SGS's Project Manager, and in future (post-handover) will report to the LVD Technical Manager.

LVD auditor qualifications:

- The Team leader is the only qualified Lead Auditor; all the others are auditors. As such, only the qualified Lead Auditor should be allowed to lead field audits;
- IA had wanted to check whether all auditors were properly signed-off during Audit 2. It appears that there was no official record of qualifications and other data of auditors being kept by SGS/LVD in their record keeping system;
- Also, SGS has chosen to retain one of the auditors who did not pass the examinations and with whom it had been agreed to redeploy her due to the poor performance in the exams. One new auditor had been added to the Auditing division, but again the person has not met the formal qualification requirements of auditors as contained in the Audit section documentation of the LVD;
- Shortfalls in the LVD procedures in relation to 'Training and Qualifications of auditors' (missing procedure) and in the supporting documents (no 'Qualifications requirements of auditors') were also noted under 'Documentation used by the Auditing section of the LVD' in 7.3.11.3 below.

Conclusion(s):

Only one auditor (TL) is a qualified Lead Auditor and should be allowed to lead field audits. Two auditors in the team are not properly qualified and signed-off. No official records of qualifications and other data of auditors were being kept by SGS/LVD in their database.

Shortfalls in the LVD procedures had also been noted during Audit 1 (See 7.3.11.3 below on 'Documentation used by the Auditing section of the LVD').

The LVD procedures and staff show serious gaps in relation to auditor training & qualifications and related records.

Recommendation:

Document and apply a procedure in relation to auditor qualifications and records.

The IA needed to raise an **ISSUE** (ref. **HII 16**) in the IA Progress DB about this:

ISSUE HII 16
Impact level: High
Identified ISSUE: Serious gaps in LVD procedures in relation to auditor training & qualifications and related records
Recommendation(s): Document and apply procedure in relation to auditor qualifications and records.

LVD auditing section infrastructure:

- TL already based in the current SGS/LVD (and future LVD) Office, because he needs to liaise with the LVD Financial coordinator and the CoC inspection team on a daily basis (assisting in the issuance of export permits, amongst other responsibilities – see below, 'Conflict of interest within the Auditing section of the LVD');
- The 4 other auditors were still in the other building (container).

LVD auditing section equipment:

- Some auditors had a computer with access to LiberTrace (4 computers, including 3 desktop and 1 laptop for the TL), however at least one auditor had not yet been issued with an SGS computer to allow efficient functioning of his/her responsibilities;
- 2 shared printers-photocopiers.

The IA will follow-up on this potential issue, whether to raise a formal issue about it.

7.4.6.3 Documentation used by the Auditing section of the LVD

Useful references

- In the previous Audit 3 report: 6.4.8, 7.3.11.1;
- In the Audit 2 report:
  - Baseline review of the 'Institutional set-up of the LAS' in 6.1.7, particularly 'The Liberia / Legality Verification Department (LVD)' in 6.1.7.1;
  - Field audit of the 'Establishment and functioning of the LVD' reported in 6.2.1, particularly 'Review of the Manual of procedures for LVD staffs' under 6.2.1.3 and 'The LVD auditing section (as of April 2018)' under 6.2.1.4.
- In the Audit 1 report (A1R): 2.1.9 (in 2.1 Main C&Rs, derived from 6.1.2.1, 1, themselves derived from the audit findings in 5.1.2.1).

As introduced in 7.3.2. and recalled in 7.3.8 / 7.4.5.1, the Legality Verification Department (LVD) is the new responsible government body designated by the VPA for legality verification under the VPA Ann. II, 1d4 and established pursuant to Ann. II, 3.1a.

Findings from A1R:

The Auditing activity of LVD is described in the following document: “Manual of Procedures for LVD staffs”, dated July 2016. The relevant pages are pp.126 to 135.

These pages contain the following relevant (especially 29 and 30) suite of Standard Operating Procedures (SOPs) that *relate to auditing of legality* in the LVD procedures:

- Section 27 Legality Declaration;
- Section 28 Legality Registration;
- Section 29 Legality Verification;
- Section 30 Legality Audit.

It is recalled that these have been assessed as “not yet implemented” in 7.4.6.1 (Performance of the LVD, SOPs). At first sight, these SOPs related to Legality also seemed to be unclear (vague and confusing), and probably not exempt from errors.

In fact, based on the content of the above procedures and the corresponding supporting documentation officially adopted by SGS, the following shortfalls were noted *in relation to auditing of legality* in general (not COCS) in the LVD procedures:

- In general, descriptions are superficial and do not satisfactorily cover the minimum content required of a credible auditing program by international standards;
- The Legality Verification procedure (no. 29) does not contain sufficient detail on audit planning, implementation, reporting and follow-up;
- Sanctioning and CARs have not been comprehensively covered;
- Complaints and Appeals are missing;
- Training and Qualifications of auditors are missing.

FDA comment to the Audit 2 report (28.11.2018): “On this point, there is no CAR in the VPA process.”
IA response to FDA comment: The term “CARs” for “Corrective Action Requests” is usual and generic in forest certification audits. It may not be fully appropriate, in this mandatory context, to designate an administrative request to an Operator to redress a non-compliant situation. However this does not make the finding less relevant.

Furthermore, supporting documents show the following gaps:

- The documents required to be completed when using a sub-contractor in an audit;
- The conditions to have an observer attend an audit;
- It is not possible to print a fully utilizable checklist, for any audit, from LiberTrace, although Libertrace is seen as the only form of the truth for auditing checklists;
- The requirements related to conflict of interest;
- Reporting templates;
- Complaints and appeals forms for stakeholders and operators;
- Qualifications requirements of auditors;
- Trainer reports for auditors;
- Conflict of interest requirements;
- Time lines for all audit steps;
- Sampling work instruction.

FDA comment: “There is no **subcontractor** role in the LVD process.”

IA response: The VPA makes provision for the creation of an auditing process as part of the LVD requirements that requires a full system of implementing a credible and transparent auditing system. Provisions for *the use of a sub-contractor in an audit* is part of such system under international standards.

FDA comment: "VPA is the implementation of local laws, and an **observer** does not have a role to play in its implementation."
IA response: The VPA makes provision for the creation of an auditing process as part of the LVD requirements that requires a full system of implementing a credible and transparent auditing system. Provisions for *having an observer attend an audit* is part of such system under international standards.

FDA comment: "The IA has a read-only role in the LiberTrace."
IA response: The FDA comment is acknowledged, however it was verified during the audit that the LVD audit team could not print their **checklist** from LiberTrace.

FDA comment: "LVD reporting **templates** have been developed by the managerial team of LVD through the capacity team leader of SGS."
IA response: No approved reporting templates are available, and the above statement by FDA is therefore considered to be misleading.

FDA comment: "the LVD have a **complain mechanism** form for stakeholders' appeals, but awaiting management approval."
IA response: The IA acknowledges the information and will follow-up. However, the form does not officially exist until it is approved.

FDA comment: "The LVD auditors are trained as auditors to perform legality verification and are currently checking the legality of operators and shipment."
IA response: However, no approved requirements on auditor **qualifications** are available as there should be.

FDA comment: "the trainer is one of the current IA, who has the **reports**."
IA response: To protect himself from any potential or perceived conflict of interest, any evidence an IA auditor may have at his disposal that he obtained outside the scope of his responsibilities as part of the IA may not be officially used as evidence.

FDA comment: "This statement [re: **Conflict of interest** requirements] needs further clarity"
IA response: Audit team members need to confirm they do not have any conflict of interest with any entity that is included in the scope of a particular audit.

FDA comment: "SOPs 26-29 gave a **timeline** for audit steps."
IA response: The FDA comment is acknowledged, however these procedures are not approved and thus have no official status.

FDA comment: "there are **work instructions** for every activities done by the LVD."
IA response: The IA Auditor insists there are no approved sampling work instructions for the audit team.

In general:

- Through the field audit conducted and the original SGS legality checklist (SD01) obtained from the VPASU, it is evident that the LVD audit team was originally trained on different documents from what is now contained in the Manual of Procedures for LVD staffs, Sections 27, 28, 29 and 30. There is no evidence of SGS retraining them on the latest compilation of those auditing procedures; it

has not been possible to obtain a response from SGS prior to the finalization of the [A1] report to supply information to the contrary;
- After several requests to SGS to supply the reports that flowed from the LVD field audits, these were provided very late during the audit cycle and the issue of reporting as well as of the checklist and report templates made available to the auditors was to be followed up on during the next audit [Audit 2];
- During stakeholder consultation conducted during [Audit 1], it was disclosed that SGS did in fact have a full set of procedures developed for the auditing section of the LVD. However there was no evidence forthcoming from SGS that these documents have been implemented, nor are they listed in the documents section of LiberTrace. The IA has not been provided with a copy of those procedures despite several requests to SGS to supply all supporting documents relating to LVD audits.

FDA comment: "the IA has the role to see all activities in the LiberTrace."
IA response: The IA's access to LiberTrace would likely not provide the requested **information** on training, audit reports, report templates, and procedures for the auditing section of the LVD. Moreover, the IA is entitled to make such requests for the prompt provision of relevant information by the MAC in charge.

Conclusions (from A1R, 6.1.2.1, 1)

One of LVD' roles is to conduct field audits on the inspections/ audits implemented by other government bodies (FDA, MoL, EPA) against the requirements of the Legality matrix to ensure that these have been checked.

FDA comment: "the **LVD role** is to check for compliance."
IA response: The FDA comment is acknowledged, however the comment is a very general definition of the role of LVD, which includes the one stated by the IA.

The Auditing activity of LVD is described in the Manual of Procedures for LVD staffs (July 2016), under the Standard Operating Procedures (SOPs), Sections 27 to 30.

A number of shortfalls have been identified in relation to auditing in the existing LVD SOPs as well as gaps in supporting documents. A full set of SOPs has been developed for the LVD auditing section, however there is no indication that these have been implemented.

FDA comment: "The SOPs has been updated, and the auditing activities as described in SOPs 26-29."
IA response: The FDA comment is acknowledged, however updated SOPs have not been signed off.

The LVD audit team was originally trained on different documents from what is now contained in their Manual of Procedures and there is no evidence of retraining them; no response to supply information to the contrary has been obtained prior to the finalization of this report.

FDA comment: "the IA needs to further clarify to the above statement."
IA response: The FDA comment is acknowledged, however the audit report contains references to sections where the evidence is more detailed and SGS is very much aware of what the statement is about.

In summary, training of the LVD audit team to the new manual of LVD COC/audit SOPs (2016) does not seem to have been updated. Furthermore, a number of

shortfalls remain in relation to auditing in those SOPs; a full set of SOPs is said to have been developed more specifically for the LVD auditing section but doesn't seem to have been implemented yet.

Other recommendations for improvement of the procedures:

- 'Associated Documents' in Section 29 include another SOP with the same "Legality Verification" name (ref. P3-LVD-LV-03). The same reference is found in Section 30, with a Work instruction also titled "Legality Verification" (ref. WI-P3-LVD-LV-04-01). Clarify why and whether this refers to an older LiberFor version of the same SOP;
- Section 30, Step 2: change sentence to "The Legality Lead Auditor selects the Company or MAC that will *undergo* the audit", meaning "that will be audited", instead of "…*undertake* the audit" (legality audits are not outsourced);
- Make it clearer from the Work instruction 30.2 that there are two parts in the Legality audits: verification of documents and information in LiberTrace (30.2.3.1), and on-site (field) audits (30.2.3.2).

Follow-up:

The above was not fully reassessed during Audit 2, however, it was found that:

- Presumably, the documentation used by the Auditing section of the LVD was developed in due conformity with ISO 9001 as part of the Quality Management System (QMS) added by SGS to the LVD's functions (as identified in 6.1.7.1), which has not prevented the shortfalls reported as part of Audit 1 (above) and Audit 2 (below);
- The LVD audit plan prepared and agreed upon for the 2018 calendar year had not been implemented;
- Procedures for the execution of audits by the auditing section of the LVD have not been officially adopted by the management team; and
- There is clearly outstanding (in view of Audit 1 findings above) confusion as to what set of SOPs is currently in use by the audit team vis-à-vis those professed to be the official documents as stated by the LVD manager (SGS Forestry Project Coordinator, LAS Team Leader).

Main conclusion (updated): There is a serious breach in performance regarding the expected outputs of the Auditing section of the LVD and what the team has been appointed to in fact do (This actually relates to 7.3.11.3).

FDA comment: "the LVD is there to access the compliance of the shipment and operators based on the legality matrix. Secondly, a clarity is needed from the IA regarding the 12 CARS raised by LVD report."
IA response: The FDA statement is acknowledged, however it recalls what the LVD should be doing ("assess compliance") and does not address the reported breach in performance. Regarding the request for more clarity, this is only a summary and the audit report contains references to sections where the findings are detailed.

Field audits have been all but halted, management of procedures and other documents is not satisfactory, unqualified staff members are being added to the auditing team (See 7.3.11.1), and capacity building of the LVD audit team seems to be undermined by the absence of (re-) training to the current procedures.

FDA comment: "The LVD Audit team continues to work by checking every export permit submitted by operators as no export permit is issued with expired documents. Additionally, there is no staff member added to the LVD Audit Team after the last training in August 2017."
IA response: The FDA statement is acknowledged, however another auditor was added and the above response again shows SGS is playing an inspection role, here, and not fulfilling an auditing function.

Main recommendations (updated): The documentation and functioning of the auditing system of the LVD should be revised by SGS to meet the minimum requirements of internationally recognized forest legality auditing system protocols.

This analysis initiated in the Audit 1 report (2.1.9, 6.1.2.1,1) has led to the recording of an **ISSUE** (ref. **MII 2**) in the IA Progress Database:

ISSUE MII 2
Impact level: Medium
Identified ISSUE: Documentation and training of LVD audit team needs updating
Recommendation(s): Revise LVD audit procedures, align training of audit team.

For follow-up by the IA during the next audit: The following posting could be found on LiberTrace's NEWS CENTER (Public access) after completion of this Audit 2:

- 07/15/2018 02:58 PM
  SOPS FOR LVD UPDATED
  The previous version of SOP for LVD was published in October 2016. Later on, LiberTrace Go Live was launched (in April 2017). One year later, it has b...
  Read More...
- Current online version of 'Manual of Procedures for LVD staffs': Version 2.2, released 07.17.2018, as "**Updated after Independent Auditor comments**".

The extent to which the updated SOPs (once officially approved*) address the gaps identified above in the documentation used by the Auditing section of the LVD will need to be assessed.
* Consistent with the analysis conducted and the issue ref. HII 11 raised in 7.3.6.8, however, until updated versions of the SOPs are officially adopted the IA shall consider the July 2016 of the "Manual of Procedures for LVD staffs", as the only official version. This has been used to modify the recommendation in HII 11.

7.4.6.4 Assessment of LVD auditing against the CFHP Checklist

Useful references

- In the previous Audit 3 report: 7.3.11.4;
- in the Audit 2 report: 6.2.1.5.

As part of Audit 2, one day was spent conducting a review of a field audit completed by the Audit section of the LVD, with the aim of assessing whether SGS/LVD auditors are correctly using the SD 01-01 and CFHP checklists.

The LVD had completed an audit of CFMA "X" [84] as part of their 2017 audit plan to do an annual audit of all active operators in Liberia*. That audit was conducted between 15 and 21 January 2018; the report is contained in **Annex 8.13** (LVD audit of a CFMA (Jan. 2018)) to this report.

[84] The true name of the CFMA is held confidential in this report (but not in the annex).

* Note: This has raised a discussion that is now taking place under 6.1.7.3 in Vol.1 (Verification and licensing framework): The IA will wish to clarify on a future occasion whether these audits are being done as part of the LVD's function to conduct field audits of the inspections/ audits implemented by other departments (FDA, MoL, EPA) against the requirements of the LM, or in the absence of any such inspection/ audit implemented. In this instance, there is no indication that the LVD auditors checked on the however existing FDA inspection report, which suggests both inefficient Level 3 control and a duplication of Level 2 control since LVD was re-checking on the Operator instead of auditing the other FDA department (see 6.4.7, 'FDA field inspections (CFD)').

The CFMA "X" was selected because no CFMA had been visited by the IA during the first audit and it was the only accessible CFMA of the two CFMAs that were active during Audit 2.

The approach was to compare what was seen in the field with what had been raised by the LVD team during their own audit. The team raised 12 CARs during their audit, as reflected in their report. Due to limited time, the full checklist could not be completed by the IA, and the IA audit team thus focused on the CFHP only. During the IA field audit, however, the following issues were identified at CFMA "X":

Table 12: Comparison of findings by the IA auditors in the field vs. by the LVD team

Clause	*No conformance seen by the IA*	*Location*
CFHP 2.9.2	Landing is built in wetland Landings are too large and too close to each other	K25
CFHP 3.1 CFHP 2.3.1 b) CFHP 2.8.2	Diesel bowser is located in a wet area Temporary house is located in a wet area Steep area felling: There is no evidence of complete assessment of the forest resource in terms of slope limitations and the exclusion of all such areas from the production forest area	M19
CFHP 3.3.1 CFHP 3.3.1	At tree felling in line 6, excessive off-cuts are being cut ▪ Field staff have no diameter tape ▪ Field staff have no Clinometer ▪ There was no FDA inspector on site. Feller is cross cutting stump infield affecting revenue generation for the Government of Liberia.	M15
CFHP 2.5.3	No evidence that workers are sensitized regarding the protection of plant and animal species	M15
CFHP 2.8.2	General felling requirements: ▪ Felling direction is not indicated and seed trees have not been marked in the field ▪ No harvesting map in the forest ▪ No exclusion areas with their buffer strips have been marked on maps or in the field.	M19 and M15
CFHP 3.2	Implementing felling operations: ▪ Block plan no available to show prescriptions that need	M19 and M15

	to be followed by fellers ▪ Directional felling is not being applied	
CFHP 2.9.3 a)	Skid trail layout and construction: ▪ Skid trails are not constructed as per Figure 4 of the CFHP ▪ Skid trails steeper than allowable gradients	M19 and M15
CFHP 2.9.4	Preparing skid trails: ▪ Skid trails wider than 4m in some cases ▪ Skid trails do not avoid buffer zones	M19 and M15
CFHP 2.10	Weather limitations on logging operations: ▪ Logging operations continue during rainy season	All
CFHP 3.6	Road transport: ▪ All trucks are not roadworthy	All

Conclusion: Based on the 21 non-compliances seen by the IA in the field (2nd column) and comparing this with the 12 CARs raised in the LVD report, it can be concluded that the LVD audit team is not conducting sufficiently thorough audits during their fieldwork.

Conclusions:

As part of assessing whether SGS/LVD auditors are correctly using the SD 01-01 and CFHP checklists, the IA compared the results of an LVD audit of a CFMA conducted in January 2018 with what the IA field audit team was able to see in the field by visiting the same CFMA during Audit 2.

Based on the non-compliances seen by the IA in the field and comparing this with the 12 CARs raised in the LVD report, it can be concluded that the LVD audit team is not conducting sufficiently thorough audits during their fieldwork.

Recommendation:

Improve the quality of LVD audits by strengthening related procedures, training and qualifications of auditors, and quality control by the management.

The IA raised a new **ISSUE** (ref. **HII 20**) in the IA Progress DB about this:

ISSUE HII 20
Impact level: High
Identified ISSUE: LVD audit team not conducting thorough enough field audits
Recommendation: Address quality and quality control issues of LVD audits.

7.4.6.5 Implementation of the role of Government departments, Data management by the LVD, Incorrect information loaded on LiberTrace

Useful references:

- In the previous Audit 3 report (A3R): 6.4.11
- In the Audit 2 report (A2R): same

- In the Audit 1 report (A1R): 2.1.11 (in 2.1 Main C&Rs, derived from 6.2.1.1, themselves derived from the audit findings in 5.2.1.1 also in A1R).

Findings from A1R:

The information contained in Libertrace (under LEGALITY, Legality Matrix) pertaining to the Contract Holder for the audited FMC "X" was reviewed as part of the work of the IA during the Audit 1.

While undertaking such verification, the first obvious finding was the issue of 'Incorrect information loaded on LiberTrace' as reported here below. The results must be read in conjunction with the analysis of the functionality of the Auditing section of the LiberTrace software (in 6.4.10, above).

The verification yielded the following results: 37% (48) of the 131 Verifiers had incorrect information; and details are given in the table below:

Table 13: Review of information contained in Libertrace for FMC "X" during Audit 1

Verifier	*Tick or cross*	*Non-conformance identified*
1.1.1	✗	Correct document loaded so should be a ✓
1.1.1	N/A	Under verification: Declaration expiry date should be annually – not "never expire"
1.1.2	✗	Correct document loaded so should be a ✓
1.2.1	✓	No document loaded so should be an ✗
1.2.2		Under "declaration" – marked "not applicable"
1.2.3	✗	Correct document loaded so should be a ✓
2.2.1	✓	No document loaded so should be an ✗
2.2.2	✓	No document loaded so should be an ✗
2.3.3	✓	No document loaded so should be an ✗. Note refers to tax clearance at time of bidding
2.3.4	✓	No document loaded so should be an ✗. Comment under declaration states: "cannot now upload any document as there is no provision in LiberTrace
2.3.5	✓	No document loaded so should be an ✗. Comment under declaration states: "See 1.1.1"
2.6.2	✓	No document loaded so should be an ✗. Comment under declaration states: "See 3.5.2", which is an incorrect reference
2.8.1		Performance bond should be the one issued at the time of the biding process – not May 2016
3.3.1	✗	Correct document loaded so should be a ✓
3.3.2	✗	Correct document loaded so should be a ✓
3.5.2	✓	No document loaded so should be an ✗
4.1.3		Wrong forest management plan uploaded – should be the 25-year

Verifier	Tick or cross	Non-conformance identified
		management plan
4.2.4	✓	No document loaded so should be an ✗
5.1.1	✗	Correct document loaded so should be a ✓
5.1.2	✗	No longer applicable so should be a ✓
5.1.3	✗	Correct document loaded so should be a ✓
5.5.1	✓	Refers back to 5.4.1 where no document has been uploaded
5.5.2		Refers back to 5.3.2 where no document has been uploaded
7.1.1	✓	No document loaded so should be an ✗
7.1.2	✓	No document loaded so should be an ✗
7.1.3	✓	No document loaded so should be an ✗
7.1.4	✓	No document loaded so should be an ✗
7.3.1	✓	No document loaded so should be an ✗
7.3.2	✓	No document loaded so should be an ✗
7.3.3	✓	No document loaded so should be an ✗
8.1.4	✓	No document loaded so should be an ✗
8.4.2	✓	No document loaded so should be an ✗
8.5.1	✓	No document loaded so should be an ✗
8.5.2	✓	No document loaded so should be an ✗
8.6.1	✓	No document loaded so should be an ✗
9.1.2	✓	No document loaded so should be an ✗
9.2.2	✓	No document loaded so should be an ✗
9.2.3	✓	No document loaded so should be an ✗
9.2.4	✓	No document loaded so should be an ✗
9.3.1		No document uploaded. Comment says: “See 9.1.1”
10.2.1	✓	No document loaded so should be an ✗
10.2.2	✓	No document loaded so should be an ✗
10.2.3	✓	No document loaded so should be an ✗
10.2.4	✓	No document loaded so should be an ✗
10.2.5	✓	No document loaded so should be an ✗
10.3.1	✓	Monthly market report is outdated – May 2017 - so should be an ✗

Main conclusion from A1R (updated):

The analysis of information in LiberTrace for the audited FMC revealed the following:

- The information in Libertrace did not accurately reflect the actual situation of the FMC allocated to the Contract Holder; and
- A significant part of the information for the FMC had not yet been loaded into Libertrace but this was not accurately qualified by SGS/LVD.

Main recommendation from A1R (updated):

- A methodical analysis of the information and data contained in LiberTrace should be conducted by the LVD.

This analysis initiated in the Audit 1 report (2.1.11, 6.2.1.1) led to the recording of an **ISSUE** (ref. **MII 4**) in the IA Progress Database, now updated as follows from LVD's data management responsibility end:

ISSUE MII 4
Impact level: Medium
Identified ISSUE: Data management issues in LiberTrace: information missing, situation not accurately qualified
Recommendation: Methodical analysis of data in LiberTrace for accurate data assessment.

Follow-up during Audit 3:

From the above, a recommendation had also been that operators should be systematically informed of the gaps in LiberTrace so as to be enabled and encouraged to work to improve compliance levels.

FDA comment to the Audit 2 report (28.11.2018): "further clarification needs to be made by the IA to the above statements."
IA response to FDA comment: See the follow-up in the Audit 3 report (below).

The idea is indeed to involve the operators more (to do more to update the situation of the file and do it right to avoid blocking the system):

- LVD must remind the Operators to update their files in Libertrace for missing documents;
- Operators already have access but will not take the initiative, even if it is their interest (to fix issues more than 10 days before ship loading). Reason: lack of qualification, resources.

The IA therefore registered a new **ISSUE** about this (ref. **MII 15**) during the Audit 3 in the IA Progress DB that complements MII 4:

ISSUE MII 15
Impact level: Medium
Identified ISSUE: Operators often do not take the initiative to update their files in Libertrace for missing documents before ship loading
Recommendation(s): LVD must have a system to routinely (manually or automatically) remind the operators (to update the situation of their file and to do it right to avoid blocking the system).

7.4.6.6 Further assessment and Capacity analysis of LVD during Audit 3

Legality matrix requirements	
LM Clauses	Under VPA Annex II, App. A, Section 2 (containing the LM): ▪ Definition of Legality Indicator: This outlines the norm or requirement the **LVD** needs to check for compliance with the specific legality principle. ▪ Definition of Legality Verifiers: Verifiers are evidence the **LVD inspectors**/or **assessors** will look for when evaluating if the specific norm or indicator has been met. This list is not exhaustive and the assessor may use additional means of verifying the relevant indicator if required. ▪ Definition of Verification Guidance: These principles guide **LVD inspectors**/or **assessors** in their evaluation of a particular indicator: • Objective: The objective puts forward the purpose of the verification procedure. • Regulatory Control: Provides for the normative and/or regulatory requirements in respect of a particular indicator and responsible government bodies. • Verification Method: Provides for description and method of verification and will consist of document review, field inspection, confirmation and/or consultation. • Frequency: Provides for the verification frequency of the indicator or certain aspects thereof by the LVD.
Other clauses	CFHP
Procedures	<u>CoC Procedures:</u> Procedures dated 2016 approved by the BOD exist. However, there is a draft updated version which is partially implemented by LVD (SGS management confirmed that field work methods have already been adopted in the new draft procedure). Unless the BOD has officially delegated the approval of the LVD procedures to a lower level, it remains the responsibility of the BOD to sign off the latest version of the CoC procedures for both LVD as well as for operators. <u>Audit procedures:</u> A full set of procedures with corresponding checklists, templates and forms were prepared with the inception of the SGS contract in Liberia in 2013. Some of these documents are still being used by the auditors during field audits but are officially no longer recognized by neither the SGS nor the LVD management. A short procedure has been added to the updated **draft** CoC procedures, but this falls short of what is required to manage an auditing section to allow them to conduct their audits in a credible, professional and transparent manner.
Design of Templates	The same applies to templates than what has been described for procedures above.

Comments and recommendations	**Comments:** ▪ Draft CoC procedures not approved ▪ Inadequate LVD auditing section procedures and not approved ▪ Misapplication of the auditing section of the LVD: No audits have been conducted by auditing section of LVD since the last IA mission in March 2018. **Recommendations:** ▪ SGS/LVD needs to have their updated CoC procedures approved by the FDA BOD ▪ SGS/LVD management needs to seriously consider how the auditing section of the LVD is going to function in a credible transparent and professional manner using acceptable procedures and templates. ▪ Use LVD auditors in the manner described in the LM and according to the definition and responsibilities of the LVD.
Relevance in LM	Fully relevant

Note: the above topics have already been addressed under previous reviews (now under 7.3.8.1-3). No new issue raised.

Capacity analysis	
Budget (Source: SGS)	
2018/19 budget	LVD is still absent from the FDA Budget for 2018-19, despite the handover from SGS. SGS is still paying until June 2019. SGS denied passing on budget information to the IA, as it was stated that it is confidential and can thus not be shared
3-year budget forecast	SGS denied passing this information on to the IA, as it was stated that it is confidential and can thus not be shared
Conclusion on budget	No conclusion – see above
Staff	
Competency of inspectors	During e.g. Inventory verification, Logyard inspection, out of laziness &/or due to difficult access, Inspectors are tempted to cheat and say “no tree; tree not found” or take the declaration and copy-paste operators’ data without going deep into the forest. This has obvious data quality implications.
Number of staff	No evidence has been presented to indicate that staff members in LVD are insufficient. However, once the LVD is fully operational, meeting all the requirements of the VPA, this needs to be revised again.
Goods and services	
Vehicles	No evidence has been presented to indicate that staff members in LVD are supplied with insufficient vehicles. However, once the LVD is fully operational, meeting all the requirements of the VPA, this needs to be revised again.
Fuel	No evidence has been presented to indicate that staff members in LVD are not being given sufficient fuel during audits and inspections to refuel vehicles. However, once

	the LVD is fully operational, meeting all the requirements of the VPA, this needs to be revised again.
Tools & Equipment	No evidence has been presented to indicate that staff members in LVD are not being provided with the necessary tools and equipment. However, once the LVD is fully operational, meeting all the requirements of the VPA, this needs to be revised again. Reviewed availability of diameter tapes, clinometers and measuring tapes.
Field accommodation	No evidence has been presented to indicate that staff members in LVD are not being provided with adequate accommodation during field inspections and field audits. However, once the LVD is fully operational, meeting all the requirements of the VPA, this needs to be revised again.
Stipends paid	No evidence has been presented to indicate that staff members in LVD are not receiving their stipends. However, once the LVD is fully operational, meeting all the requirements of the VPA, this needs to be revised again.
Capital Expenditure	
SGS denied passing this information on to the IA, as it was stated that it is confidential and can thus not be shared	
Performance level in conducting field inspections	
Schedule for inspections and audits	No audit plan being rolled out for 2018 and no audits currently being under taken. SGS is misinterpreting the requirements in the VPA. Head of SGS believes that the current audit team is not competent to do their work. The audit team has effectively been shut down and being used to check documentation in LiberTrace.
Compliance with schedule	See above

Correct use of templates	No templates are officially available for the Auditing Section of LVD. The documents that were practically used when the LVD auditing section was still doing audits, are not recognized by the LVD and SGS senior management team.
Completeness of reports	No audit plan being rolled out for 2018 and no audits currently being undertaken. Thus not possible to review the completeness of reports
Issuance of penalties	LVD does not issue penalties – N/A
Payment penalties	See above
Closure of corrective actions	Corrective actions raised during field audits are neither properly managed nor closed out. See details in this regard in Audit 2 report.
Overall conclusion	
Current CoC SOPs are not always valid and in some cases not clear – see review of this done by the IA in Audit 2. LVD Inspection section is functioning. However, there are not inspections of all	

the required activities occurring in concessions, e.g. a very small sample is taken of stump inspections; and field data collected during e.g. Inventory verification and Logyard inspection is not 100% reliable (partly invented out of easiness). LVD Auditing section is currently non-functional and used primarily to assist with the issuance of Export permits. It does not work to a set of approved audit procedures to ensure that they work consistently
Recommendations
CoC SOPs need urgent update, approval and implementation to streamline credible traceability in Liberia. Implement the CoC procedures fully, once they have been updated and approved. Auditors in the LVD Auditing section need to be used to do the audits of the operators in Liberia, and government departments, as required in the VPA. This is what their primary function is. LVD Auditing Section needs to work to a set of approved audit procedures to ensure that they work consistently and thus maintain credibility in the results they obtain form their document reviews and field audits. Suggested measures: Involve FDA/LVD management to challenge the status quo of unreliable field data collection; use GPS with data entry or scan BCT.

Note: Many of the above topics have already been addressed under previous reviews (6.2.3.2, 7.3.8.1-3).

7.4.6.7 Issues potentially undermining the LVD handover process from SGS

This new section has been developed in the Volume 1 of this Audit 4 report (6.2.3.7).

7.4.6.8 Audit of a container loading inspection by LVD during Audit 4

This new section has been developed in the Volume 1 of this Audit 4 report (6.2.3.8).

7.4.6.9 Audit in a Timber Sales Contract (TSC) area during Audit 4

This new section has been developed in the Volume 1 of this Audit 4 report (6.2.3.9).

7.4.7 Implementation of the COCIS software (LiberTrace)

7.4.7.1 Functionality of the COCIS software (LiberTrace)

Status: This review can now be found under 7.4.7.1 (with the same heading) in this report, where it has been moved for archiving.

Useful references:

- In the previous Audit 3 report (A3R): 6.4.10;
- In the Audit 2 report (A2R): 6.4.12;
- In the Audit 1 report (A1R): 2.1.10 (in 2.1 Main C&Rs, derived from 6.1.2.2, 3, themselves derived from the audit findings in 5.1.2.2 also in A1R).

As per 7.4.5.2, development and enhancement of the COCIS software during 2013-2018 was the responsibility of SGS under the EU-UK DFID Contract, which included the supply, hosting, support, and maintenance of the LiberTrace software serving as COCIS.

Data management in COCIS is thus one of the main LVD functions, for which functional software specification is supposed to have been tailored to the needs by SGS, in relation with its LVD capacity-building mandate.

Following the initial investigation conducted during Audit 1, some new findings or developments resulted from auditing in the field during Audit 2 and follow-up during Audit 3.

Findings from A1R (updated):

Suggested changes to the Auditing section of the LiberTrace software

This analysis related only to the Auditing section within LiberTrace. A list of 65 issues were compiled in A1R, 5.1.2.2. Twelve (12) issues related to "Libertrace, General" and the other issues are referenced with the Principle, Indicator or Verifier number in the Legality Matrix. Each one contains one or several recommendations that are specific to detailed functionality and cannot be summarized.

A list of suggested corresponding changes to the auditing-related functionality of the software were captured in a separate report first provided as Annex 7.3 in A1R, and again as **Annex 8.10** to this A4R Vol.2.

Speed performance issues in LiberTrace

In addition, there was evidence of slow upload of log data for exports that did not seem to always be related to the line speed of the user. The audit team sat with one operator for 45mn who finally gave up, as the process could not complete. The audit team simultaneously checked the line speed by uploading other files via email. This occurred relatively quickly, alleging that the line speed was good on the day.

The IA auditors thought it would be helpful to establish the reason for the slowness of the system in relation to the upload of log data for exports, and see whether the issue was clearly recognized and identified and being addressed, as this can affect the successful implementation thereof in the final instance; this would require an outside opinion, of a competent IT person*.

Follow-up during Audit 3:

Since the software and the data have been hosted on SGS' servers in Geneva, the SGS IT team in Geneva was initially blaming the network. However, they put a file compression functionality in place, and the SGS Liberia manager could see the improvement and had not had further complaints; but it may also have been due to the network being improved (optic fiber being generalized in Monrovia, up to the antennae, then microwave transmission). Some transmission errors were also mentioned.

* For future attention: 1) See with EFI: Is the low speed performance issue in the scope of the planned evaluation of the LiberTrace software that is mentioned in 7.3.3.2 in this report; 2) Are private sector operators still complaining about this issue (i.e. previous instances of slowness of the system when uploading log data for exports, affecting its performance for users) or confirming the improvement? Assess broader private sector's user satisfaction vis-à-vis LT.

Main conclusion, from A1R: In view of the list of issues that have been compiled regarding its auditing section, the LiberTrace software showed opportunities for improvement due to inefficiencies and in some cases significant design and

programming issues. The remainder of LiberTrace had yet to undergo further evaluation by the IA.

Main recommendation, from A1R: The functionality issues that were raised concerning the auditing section of Libertrace should be reviewed, prioritized and addressed [New note from Audit 4: provided such a *separate* "auditing section" can be identified in LT; the IA now prefers to talk about "auditing-related (also referred to as legality verification) functionality"].

This analysis initiated in the Audit 1 report had led to the recording of an **ISSUE** (ref. **MII 3**) in the IA Progress Database:

ISSUE MII 3
Impact level: Medium
Identified ISSUE: Functionality issues related to the LVD auditing function in the COCIS software (LiberTrace)
Recommendation: Make suggested changes to the auditing-related functionality Libertrace.

7.4.8 Implementation of the role of Government departments (FDA, Other roles)

7.4.8.1 Law Enforcement Division (LED)

"*The LED is currently weak*" (institutional stakeholder comment, Audit 2).

As part of the Audit 3, the IA has used a combination of documentary research and field audits to investigate and where possible assess implementation of the roles and responsibilities assigned to the Law Enforcement Division (LED).

As per the questions that the IA had prepared and asked (in 5.1.3.4), the Law Enforcement Division (LED) had been understood to *participate in the chain of reporting on law infringement, enforcement of sanctions, and publication of information* with a *role in law enforcement* that needed to be further investigated, whether it really includes the enforcement of sanctions as expected and, if not, which FDA Department does it and what else the LED does.

In the absence of a clear description of that chain of law enforcement available or made known to the IA (which, for future attention, the IA shall keep looking for, in order to confirm or modify the following expectation), the IA's current expectation is:

- that there are FDA Departments that do Level 2 checking and inspections[85] on Operators; and
- that those FDA Departments then report the infractions they have observed to the LED for further investigation – where deemed necessary – and enforcement of any sanctions or redress actions;
- that the LED also follows up and verifies with the Level 2 and other relevant entities that the sanctions are executed and that cases of incompliance get redressed; and

[85] As per the already mentioned 'LAS Verification Framework' document (SGS/ FDA, 2013) and the discussion in 6.1.7.3, 'Verification and licensing framework'.

- that the Public Affairs Division (PAD) finally publishes the information it receives from the LED as per 6.2.4.3 (Review of the role of PAD).

The following findings have been reorganized in chronological order for this Audit 4 report.

A search of the **NFRL (2006)** for "LED" and "Law Enforcement", among other documentary sources explored, only yielded that "*Law enforcement officers* [among others] *shall promptly report offenses to the Government* (Section 20.4 Reporting of Offenses). No "Law Enforcement" unit is identified as such in the NFRL.

The search of the **CFHP Checklist** and the **CHFP** (**2007**, revised 2017) itself for "LED" and for "Law Enforcement" yielded nothing. This suggests that no "Level 2" role is assigned to the LED for verifying CFHP requirements.

As the **VPA Annex II** (containing the **Legality Matrix**), under Section 3 (INSTITUTIONAL SET-UP), recalls (in **2013**), "a service provider will be contracted (…) to build the capacity of the FDA departments and divisions involved in implementing the LAS". Clearly, the LED is part of it. The IA has collected evidence about the reality of such capacity-building support, not by SGS, but by VPASU and the Liberia Forest Sector Project (LFSP).

The **Annex II** does not mention the acronym "LED" in any place, but "*Law Enforcement Division*", "*Law Enforcement Unit*" and "*Law Enforcement Department*" (which the IA assumes are one and the same thing) are mentioned *in extenso* in five places in the Annex as the table below shows:

Table 14: Mentions of Law Enforcement Division / Unit / Department in the LM

Principles and Indicators	**Relevant mentions**
P2: Forest allocation 2.6 In consultation with stakeholders and based on its socio-economic survey report, the FDA has prepared an integrated map showing the contract area and adjacent land areas such as other concessions, protected forest areas and private land.	Verifier 2.6.2: FDA enforcement report (FDA compliance Audit Report) Verification Method, Description: *The LVD should verify that these requirements were met checking the validity of the concession map with the (…)* ***Law Enforcement Department****.*
P5: Environmental obligations 5.3 Contract or permit holder or timber processor has disposed of equipment, fuel, wood refuse and related waste arising from its operations in a lawful and environmentally appropriate manner	Verifier 5.3.2: FDA Annual compliance audit report Verification Method, Description: *The LVD must consult with, and verify with the (…)* ***Law Enforcement Division****.*
5.4 Contract holder has maintained a buffer between its harvesting operations and water courses, and has specifically not felled trees that could threaten the flow or stability of the water course(s)	Verifier 5.4.2: FDA Annual Compliance Audit Report Verification Method, Description: *The LVD must consult, and verify with the (…)* ***Law Enforcement Unit.***
5.5 The Contract or permit holder has in place procedures (i) to ensure compliance with rules regarding wildlife conservation, and (ii) to avoid harvest or trade in endangered or threatened plants and animals species.	Verifier 5.5.2: FDA Annual Compliance Audit Report Verification Method, Description: *The LVD must consult with, and verify with the (…)* ***Law Enforcement Division****.*

P8: Workers rights, health safety and welfare 8.6 The contract/permit holder or timber processor has observed legal requirements concerning housing and sanitation as well as operational hygiene and general workers safety pursuant to the code of harvesting practices and guidelines issued by the FDA	Verifier 8.6.1: FDA Compliance Audit Report Verification Method, Description: The LVD must verify that workers' health, sanitation and shelter are properly addressed by the contract holder. This is to be done through (…) a *review of the Compliance Audit Reports by the FDA* ***Law Enforcement Unit***.

The above mentions indicate that:

- The LED is competent in the following areas: validity of the concession map (with the FDA R&D Department), and compliance with some environmental and social obligations (with the FDA Commercial Department and EPA).

Search of the **SD 01-01 - Audit Checklist** (based on the LM of **2013**)**:**

- for "LED": n/a;
- for "Law Enforcement": same as above in the LM (from which the Checklist was derived), which is logical.

In the '**LAS Verification Framework**' document (SGS/ FDA, 2013), "Law Enforcement" only yields two occurrences: 1) *Law Enforcement*, one of "the other Departments (…) also *involved in maintaining legality*", the "key Department in the FDA to implement Legislation" being the CFD (2.2.1, FDA Departments, 5), and 2) *FDA Law Enforcement* as 'Relevant Government Department' (2.3.2, Table 2 p.16) in relation to Indicator 2.6 (as in LM, SD-01 Checklist).

In the **FDA Annual report 2015** (Chap. 1, 1.0 Administrative Department), "*Forest Law Enforcement*" is described as one of the "several specialized units" forming the Administrative Department that "is responsible for the day-to-day operations of the FDA and ensures the implementation of all programs, including the effective functioning of other departments" (together with Finance and Accounts, General Services, Procurement, Human Resource, Legal Unit, Strategic Planning, Internal Audit, Public Affairs Division (PAD), and Information Technology).

Unless there is confusion, placing the LED as part of the Administrative Department reporting to the DMDA *totally contradicts the FDA Organizational Chart provided in the same Annual report*; the responsibility of these specialized units, as a whole, is also vague.

Review of the FDA Annual report 2015, 1.5 Forest Law Enforcement Unit:

- "This Division is responsible to ensure *total compliance* to the National Forestry Reform Law (NFRL) of 2006, the Ten Core Regulations and Code of Forest Harvesting Practices (CFHP) and other related policies" [in other words, "to ensure compliance at all levels in the Forest Sector" (Meeting with LED Technical Manager, 23.10.2018)]". Making the LED "responsible to ensure total compliance to" these key forestry laws and policies is close to what the name of the Division suggests, i.e. the Division that is ultimately responsible to ensure broad compliance, *above all departments*, i.e. to do law enforcement (in line with the definitions of Compliance: acting in conformity to laws and regulations; Enforcement: process of ensuring compliance[86]).

[86] FDA Compliance & Enforcement Handbook' (1st Edition- 31 August_2017), Selected definitions, p.4

- A list of "Achievements" follows, that relate to very different (and unexpected) things:
  - Destroyed confiscated bush meat
  - Supervised the payment of FDA Check Point Assistants country-wise
  - Verified log stock reports at landings of two companies
  - Established revenue collection points
  - Conducted training for Check Point Assistants in revenue collection reporting.
- The same FDA Annual report 2015 provides that the '1.6 LEGAL SECTION' also "(…) supports management efforts in ensuring Compliance to Forest Laws and Regulations and their enforcements". It is not clear however how the 'Legal Section/ Counsel/ Unit' currently coordinates with the LED in the reporting and provision of legal advice to FDA Management.

The search of the **COCS SOPs (2016)** of the LVD and related Work Instructions (WIs) provided the following indications of further LED's roles: as *the designated recipient of information from LVD regarding issues* with post-felling, timber yard[87] or checkpoint[88] inspections, and if operations go on despite overdue fee payment[89], for further action, and about seized timber, and to be involved in the decision about what to do with (release or confiscate) the seized timber (with the County Circuit Court)[90].

4th JIC Aide Memoire (September **2016),** Annex 3 - Forward Planner (summary):

- Legality Assurance System development: Update on Region 3 Pilot: 15. (…) The piloting aims at (…) field-testing the *coordination of law enforcement and administration of justice*.
- Law enforcement and improvement of regulatory framework: 24. Further achievements in 2016 include the 2nd Forest Governance Workshop for the *FDA law enforcement officers*, (…) with the *focus on investigations into non-compliances/violations* of the forestry laws. Based on the workshop, an Enforcement and Compliance Procedure Handbook was being finalized. (…)

A presentation made to the 4th JIC[91] only relates to what the Aide Memoire also mentions under '**Law enforcement and improvement of regulatory framework**':

- In 23: Efforts to improve the legal capacity and coordination of MOJ and FDA under an MoU signed in June 2016 that foresees quarterly meetings of the senior leadership of MOJ and FDA (…) to [first] discuss current compliance and enforcement issues, including progress on the review of existing forest concessions.
- 24. Further achievements in 2016 including the 2nd Forest Governance Workshop (for the FDA law enforcement officers, prosecutors, Liberia National Police and National Port Authority) with the focus on investigations into non-

[87] Sections 12, SOP Step 8 (+ WI 12.2.2.9) and 19, SOP Step 8 (+ WI 19.2.3): "The Technical Manager informs and shares the results [of the Inspection, if not satisfactory] with the FDA *Law Enforcement Unit* for further action"

[88] Sections 15 (+ WI 15.2.3.1) and 19 (+ WI 19.2.3) "In case the products are not tagged and suspected to be from illegal origin, this is potentially an infraction and it must be reported to the FDA *Law Enforcement Unit* and managed as per the Non Compliant Timber Procedure"

[89] Section 32 (+ WI 32.2.3): "Note: the LVD informs the FDA *Law Enforcement Unit* if it knows any: - Exportation of wood products despite Export fees and Stumpage Fees are overdue; - Processing of wood products despite Sawmill permit annual fees are overdue"

[90] Section 33, Step 6 (Communication): "The LVD communicates the information [about the seizure] to the FDA *Law Enforcement Unit*, owner of the timber and any other relevant stakeholders" (+ WI 33.2.3.5); SOP Step 7 (FDA Decision): "The FDA *Law Enforcement* and/or the Circuit Court of the County decide whether to release or confiscate the timber" (+ WI 33.2.3.6)

[91] JIC4_8.2_Law Enforcement and Improvement of Regulatory Framework Presentation.pdf

compliances/violations of the forestry laws. It is based on the workshop, that the 'Enforcement and Compliance Procedure Handbook' was developed. The MOJ-FDA legal team also drafted an Administrative Procedure Regulation for the FDA that will allow FDA to hold administrative hearings to resolve disputes. An update on the development of new regulations was also provided, but noteworthily *not a single specific mention of the LED was made* in the context of law enforcement.

On a diagram titled 'FDA Departments and **LED Process Flow for Non-Compliance Reports**' dated by or before **2017** (See **Annex 8.2**[92] to this report):

- The LED also connects directly to the MD, higher than the DMDO to whom the five operational Departments (LV, Commercial, Conservation, Community and R&D) report; and, in addition,
- The Regional Offices have a reporting line to the LED as well as to three of the five Departments (LV, Commercial, Community), which would suggest some inter-departmental coordination at the Regional Office level in their reporting to the LED.

Quick review of the '**FDA Compliance & Enforcement Handbook**' (1st Edition August **2017**, but not yet approved):

- *In* SELECTED DEFINITIONS (p.4)
  - "*Law Enforcement Division (LED)*: a specific department at FDA that should *receive all reported suspected violations* and *oversee all investigations*";
  - "Managing Director (MD): the head of the FDA. The *MD authorizes LED investigations* and is the lead in FDA coordination with other agencies";
  - "The FDA, specifically the Conservation and Commercial Forestry Departments, *and the LED* are primarily responsible for *conducting investigations to ensure enforcement and compliance**".
    *Note: Is the fact that three entities within the FDA are identified as being "*primarily* responsible" not an indication of a lack of clear definition of the respective roles and responsibilities?
- In 1.3.2, further 'Details of Enforcement Steps' follow, about:
  - 'STEPS 1-2: RECEIPT OF INFORMATION RELATED TO ALLEGED VIOLATIONS' (p.14), with legal references to: FDA Regulation 109-07, NFRL Section 20.4.
    Extracts: The *FLED should receive all reported suspected violations, including from any other FDA department* within 24 hours. (…) the Head of the FLED is required, within 48 hours of receipt, to *notify the MD*; The MD, within 5 working days, shall review the notification and, if there is reasonable suspicion (…), instruct the FLED to *commence an investigation into the claims*.
  - 'STEPS 5-6: FILING OF INVESTIGATION REPORTS' (p.15)
    Extracts regarding Inspector's Report: During the course of the investigation, the *FLED continually updates the MD of the investigation's progress* (the investigator shall enjoy reasonable independence in reaching their conclusion). (…) the inspector should file a report with the Manager of the FLED (…). LED Report: (…) the Manager of *FLED submits*

[92] Source: VPASU (2017)

a report to the MD, which includes all of the information above (a – f), in addition to a *recommendation of how to proceed with the case*.

- and 'STEPS 7-8: ENFORCEMENT ACTIONS' (p.16)
  Extracts: CRIMINAL JURISDICTION: The NFRL criminalizes various offenses (list provided in Section 1.4). In case of criminal violations, *FLED should coordinate with LNP and MOJ to proceed*.

- The LED is otherwise mentioned twice in the Handbook:
  - in 1.1.2 (coordination of Inspector Safety);
  - in 1.2.2 Gathering of Evidence, 3) Custody of Evidence, b. (…) *The LED is responsible for storing and maintaining evidence*.

The search into the **Compliance Procedures for LM** (VPASU, V2.2 August **2018**, "public, not yet endorsed") yielded the following:

- *Law Enforcement Division (LED)*: one of the 'main *information sources* by Principle' for P2 (Forest Allocation) and P8 (Worker's Rights).
- Verifier 1.1.3, Non–compliance: FDA Departments/ Divisions/ Units report suspected violations to the Managing Director, *assisted by the Law Enforcement Division* and Legal Advisors, to proceed according to the legal framework – using the Compliance and Enforcement Handbook.
- Verifier 1.2.3: *FDA Law Enforcement approves* the "Cross check of list of shareholders and beneficial members with prohibited persons ["Debarment"?] list".
- Verifier 1.2.3, Non–compliance; Suspected violations shall be referred to the FDA MD *by the Law Enforcement* and shall be *investigated and decided through the laws*.
- Verifier 2.6.2, IA Note: The FDA compliance audit report under Verifier 2.6.2 is *not an annual report* but is rather triggered by the Intent to operate a forest license. So, there is confusion whether compliance audit reports are annual or else.
- Verifier 2.6.1, Notes: LVD shall ensure that the requirements for the verifier were met and also confirm the validity of the concession map with the FDA R&D department *and Law Enforcement Department*.
- Verifiers 2.9.1 & 2.9.2, Non–compliance: Consultation with the Commercial Department *and Law Enforcement Department* shall follow.
- Verifiers 3.1.1, 3.1.2 & 3.1.3, Non–compliance: Community Forestry Department shall make a *report to Law Enforcement* where there has been a violation.
- Numerous instances where "Where suspected violations are detected, they shall be *referred to the Law Enforcement Department for investigation*" (Verifiers 3.2.1-3, 3.3.2-4, 3.4.1, 3.5.1-2, 4.1.1-3, 4.2.4, 8.1.1-4, 8.6.1).
- Verifier 3.5.2 (FDA Compliance Audits): Annual compliance *audits Executed by FDA Law Enforcement*: Law Enforcement shall conduct a *document review* with the Community Forestry Department, and *field inspections* shall be undertaken to *compile the audit report detailing payments of fees to communities*.
- Verifier 4.2.4 (Annual Compliance Audit Report of FDA): Annual Compliance *Audits Executed by FDA Law Enforcement*: Law Enforcement shall conduct a *document review* with the Commercial Department and *field inspections* shall be undertaken to *compile the audit report*.
- Verifier 5.4.1-2, 5.5.1-2, Notes: The LVD must consult, and verify with the FDA Commercial Department *and Law Enforcement Unit*.

LED staffs have been trained at using the above two documents ('Compliance Procedures for LM' and 'FDA Compliance & Enforcement Handbook' - See A4R Vol.1, 6.4.1.2), however these two documents are not yet considered to have been officially approved as implementing tools (though backed by the CFHP)[93].

6th JIC Aide Memoire (June **2018**)**,** Annex 3 - Forward Planner (summary):

- P1, January 2018 Status, Capacity (orange): Shareholders updated by FDA (commercial and *law enforcement department*s) on P1 requirements;
- Regulations in place for compliance with VPA LAS to issue FLEGT Licenses, January 2019 Status, Capacity (orange): Implementation of *administrative enforcement* in FDA Regions 3.

The LED can be found on the **Organizational Chart of the FDA** (Oct. **2018** - See Annex 8.1) as "Law Enforcement", reporting directly to both the Managing Director (MD) and the Internal Auditor of the FDA, above the Deputy Managing Director for Operations (DMDO) and the Deputy Managing Director for Admin. & Finance (DMDA). This is a strong position, above all operational or supporting functions.

The IA registered an **ISSUE** about this, referenced **HII 21** in the IA Progress DB, during Audit 3:

- Impact level: High
- Identified ISSUE description: As a whole, a thorough document review has not provided any clear definition of LED's roles and responsibilities in any one place, only an incomplete, vague, erratic, and confusing description of the situation, with ample dilution and duplication of roles, both before and under the VPA.

  The control chain is currently dysfunctional, due to loopholes, overlaps, and the lack of coordination. CFD field inspection reports to the DMDO do not reach LED (in either HO/ROs) while (hence limited) LED reports go to MD. No protocol exists with the PAD to ensure PAD has access to information for publication (on LiberTrace/FDA website).
- "Recommendation, or status of IA record": The LED could concentrate on "Level 3 internal auditing" (as an inspectorate general role) upon the "Level 2 checking bodies" made responsible in first instance to detect, investigate and report suspected violations in their field.

  The LED would receive all Level 2 reports on law infringement, store and maintain evidence, assess the imposition of sanctions, and then report to the MD for a decision on the recommended sanction or the need to re-investigate the case (which would be an exception rather than the rule). LED would compile the Annual Compliance Audit Report for each operator and could also prepare the 'Annual Enforcement Report' to the FDA Board.

Audit 3, Field audit report

[93] As a result, LED staffs say they are finding it difficult to have their work legitimized and recognized. Is LED indeed supposed to play an Inspectorate role, checking on other Depts, receiving reports from other Depts and recommending penalties, reporting to the MD but also being entitled to report outside FDA in the absence of a response, to MOJ? Should field reports from Commercial not indeed go through LED and then to the MD, instead of currently bypassing LED and going to the MD directly? This links to the comment from a stakeholder, that LED is currently weak. The IA needed to understand the role of the LED, vs. other FDA Depts. Direct field checks on operators seemed to be a potential duplication of what other FDA Depts. do: Commercial, LVD (and whether LVD established by the VPA overlaps), and maybe PAD.

During Audit 3, two audit meetings were held with the Director and staff members of the LED. The 'Audit 3 report - **Review of Government bodies on LED**' is again herein provided as the **Annex 8.5** to this report.

The IA's field audit report covers relevant LM clauses (including the Indicators identified in the above table). It first mentions the LM **Indicator 4.2**[94] and **Verifier 4.2.3** (**Annual compliance audit report** of FDA), to report the following:

- "No Annual compliance audit report (has been) prepared by FDA that covers the Compartment planning and Annual coupe review. *A letter was sent by the MD of FDA to Law Enforcement to complete the Annual compliance audit, but Law Enforcement does not have the resources to complete this audit*";
- and to note, for further action: "The IA needs to check with the next audit who is responsible for writing the report, whether LED or the FDA jointly (Management / several Departments)". Note: above research suggested LED could be responsible for leading that effort.

In relation to **Verifier 2.6.2** (FDA compliance Audit Report [same as above]), the IA auditor noted the following issues:

- Procedures: (…) No procedures exist to guide LED in conducting annual (compliance) audits [subject to confirmation of ownership below] in a consistent and credible manner.
- Design of Templates: No checklists exist for annual audits that must be conducted by LED [same]. No report template for annual audit report.
- Conclusion: Lack of procedures and templates as described above.
- Recommendations:
  - Clarify where the ownership of the annual (compliance) audit of each operator lies (CFD vs. FLED vs. LVD vs. EPD) [or if LED has the lead].
  - Prepare documentation (procedures and templates to fill the gaps identified above) to ensure that the annual audit on each operator can be completed in a credible, consistent and transparent manner (see also the requirements stipulated in the NFRL regarding the annual audit [Note: unless there is confusion with FDA's 'Annual Enforcement Report' to the Board].

The IA registered an **ISSUE** about this, referenced **HII 22** in the IA Progress DB:

- Impact level: High
- Identified ISSUE description: FDA not, or inconsistently preparing Annual Compliance Audit Reports (ACARs) for all operators, due to the lack of clear assignment of the task and the lack of procedures, checklist and report template, and resources to complete it
- "Recommendation, or status of IA record": Envisage ACAR as a summary of broad compliance information available from LVD and other relevant departments, to be compiled by the LED.

In relation to **Indicator 5.5** (See above table), **Verifier 5.5.2** (**FDA Annual Compliance Audit Report** [same as above]), the IA auditor noted the following issues:

- Procedures: Procedures are partly captured in the above-mentioned Compliance and Enforcement Handbook.

[94] "The contract or permit holder complies with the terms of its annual operational plan and requirements of law regarding the species and quantities it is permitted to harvest"

- Design of Templates: No approved templates are available for the LED officers to enforce requirements related to wildlife conservation, and to avoid harvest or trade in endangered or threatened plants and animal species.

In relation to the broader issue of LED's roles and responsibilities (See HII 21):

- Comments and recommendations: A critical problem is about the precise role of LED within FDA. Are they supposed to report to the MD, as the FDA Organogram indicates? What are their responsibilities vis-à-vis e.g. FDA CFD, CyFD, EPD, and LVD? Is LED part of the reporting and enforcement chain? Are they supposed to act upon field inspection reports from other departments or to do their own separate inspections to collect primary information, which would suggest both a lack of coordination and a duplication of efforts?
- LED mandate is described in Job Descriptions dated September 18, 2006. However, these job descriptions need to be revisited once the exact role of LED has been defined.

Capacity analysis based on the National Budget[95]:

- 2018/19 budget, 3-year budget forecast, Conclusion on budget: No provision in the National budget for the fulfillment of the responsibilities of LED

Staff:

- Competency of staff: Most staff are not adequately trained due to new officers having joined the LED team
- Number of staff: 19 staff in LED of which 5 are in the central office.

Goods and services:

- Vehicles: (…) Division has one vehicle assigned to the Head of the Department. Bottleneck to get central office staff to get to the field.
- Fuel: No fuel provided to field staff for (the 12) motorbikes.
- Tools & Equipment: PPE supplied by VPASU, also 6 GPS units, 16 cameras, 15 computers, uniforms; how sustainable is the supply in the long-term?
- Field accommodation: No field accommodation provided
- Stipends paid: Not paid

Capital Expenditure:

- No provision for capital expenditure in the 2018/19 government budget.

Performance level in conducting field inspections:

- Schedule for inspections: No schedule of field inspections. Three inspections done in 2017 (two sponsored by FDA and one sponsored by REDD) and 3 inspections were done to date in 2018 – these 3 inspections were sponsored by REDD.
- Compliance with schedule: No schedule
- Correct use of templates: No report template
- Completeness of reports: Reports are not sufficiently complete to cover the scope of the work of LED
- Issuance of penalties: No penalties are being enforced and no registry is being kept of any punitive measures taken against operators for non-compliances.
- Payment of penalties: See above
- Closure of corrective actions: See above

The IA registered an **ISSUE** about this, referenced **HII 23** in the IA Progress DB:

[95] Source: NATIONAL BUDGET, Fiscal Year 2018/2019 FOR THE PERIOD: JULY 1, 2018 TO JUNE 30, 2019 MFDP

ISSUE HII 23
Impact level: High
Identified ISSUE: No provision in the National budget for the fulfillment of LED's responsibilities. Most staff is not adequately trained. No schedule exists for field inspections; only 3 done in 2018 (under LFSP). No registry is being kept of any punitive measures taken against operators for non-compliances; no penalties are being enforced
Recommendations: Adequate budget allocation to LED. Proper training of LED staff. Proper scheduling of work. Registry to be kept, feeding into the Annual Enforcement Report to the Board (NFRL, 20.11(a)).

Overall conclusion

The LED is totally suppressed within the FDA from making any meaningful contribution to legality in the Liberian forest sector.

The main shortcomings are summarized as follows:

- Role within FDA not clearly defined, understood and implemented
- No clear definition of the roles and responsibilities of LED vis-à-vis other government departments
- Draft procedures not yet signed-off by BOD of FDA
- No approved templates available for implementation of responsibilities (whatever those may be)
- No official registry being kept by LED of any punitive measures taken against operators in the forest industry
- No budget provision in the national budget
- All staff not trained to fulfill their role in terms of the Legality matrix
- No resources to allow staff to function effectively and efficiently – vehicles, accommodation, per diems, PPE, field instruments, computers.

Recommendations

- FDA BOD to sign-off draft operating manual of LED (in FDA Compliance & Enforcement Handbook, dated August 2017, and Compliance Procedures for LM, dated August 2018).
- Prepare procedures and templates to fill the gaps identified above.
- Clarify whether the ownership of the annual audit of each operator lies (FDA vs. LED vs. LVD vs. Environmental Protection Agency) and prepare documentation to ensure that annual audit on each operator can be completed in a credible, consistent and transparent manner (see also the requirements stipulated in the NFRL regarding the annual audit.
- Maintain registry of fines and other steps taken against operators.
- Prepare a bottom-up budget for LED in terms of goods and services as well as Capex requirements to allow the department to fulfill its responsibilities in terms of law enforcement in a credible and transparent manner.

Further notes from the Audit 3, regarding LED's mandate / role description / ToR (Meeting with LED Technical Manager, 23.10.2018), and complementing the above:

- Ensuring compliance includes through LED's own field inspections, sometime joined with CFD, LVD.
- Must check on Commercial on the inspection side.
- Auditing for compliance: Operators, CFD, LVD.

- CFD reports go the DMDO, while LED's (would be supposed to) go to the MD; coordination is reportedly working, but there is actually very little, likely (see below)
- Overlaps? Yes (both overlapping and loopholes, control chain not functional.
- Who is responsible to issue fines? Normally CFD signal LED or LVD; LED ask for permission (above) to go and verify the information; LED issue a recommendation to the MD, the MD must approve it, LED then prepares and hand delivers it to the Operator, LED get a copy of the payment to Accounts.
- The IA has received a copy of a Memorandum[96]: "in line with *LED's obligations to conduct compliance audit in Forest Concessions"*, the TM requested the DMDO's approval of required DSA (Daily Subsistance Allowance) and means of travel for the listed staffs. Whereby the IA also notices for future attention* LFSP funding to LED "in line with the Division's work plan and budget under the project".

  * For future attention: IA to meet and discuss with LFSP regarding funding and broader support to LED, and understanding of LED's obligations wrt (annual?) compliance audits and ACAR. See notes from Audit 4, in 6.2.4.2 Vol.1.
- Procedure, to figure out the level of penalties: Annex D (SUMMARY OF PROPOSED PENALTIES FOR MOST COMMON FORESTRY VIOLATIONS in the latest (Aug. 2017) version of the Enforcement Handbook (not yet approved by the former MD, because of some issues).
- CFD also have the right to issue fines, but in a coordinated way with LED.
- No overlap with LVD? Not on CoC, but some for auditing. Difference between the respective roles: ?
- Not following up from CFD reports? LED are not getting these reports, neither in HO, nor in LED regional offices.
- Any record of fines issued by LED: Yes, some charcoal consignment… No records in one place (register).
- On whose reports LED must be able to rely? Should be CFD's but no reports, CFD are not informing LED
- LED relying entirely on their own staff
- Receive LED reports: The IA has received a copy of the ALMA WOOD COMPLIANCE AUDIT report (February 15, 2017) - See below.
- The IA also received the copy of a 'LFSP second report' (See below)
- Aware of legal requirement that the information on a sanction imposed on any contractor should be disclosed, by PAD? Not discussed
- Aware of the protocol to be followed to ensure that the PAD has access to information from FDA for publication? / Broader procedure being developed, leading to the publication of information (on the LiberTrace or FDA website)? Not discussed

<u>Review of the ALMA WOOD COMPLIANCE AUDIT report (February 15, 2017):</u>

The 3-page report (report of the annual compliance audit conducted at Sun Yeun/ ALMA Wood (TSC-A-16) Concession in Cape Mount County.) is forwarded to the then MD of the FDA in the form of a Memorandum. It states "*The Annual Compliance Audit is an important verifier under the Legality Matrix which will enable the Forestry Development Authority to issue "Compliance Certificate" annually to all logging companies as required by Section 3.4 (a) (b) of the National*

[96] 'REQUEST TO CONDUCT COMPLIANCE AUDIT UNDER THE LIBERIA FOREST SECTOR PROJECT (LFSP)' in the concession area of Sing Africa Plantation (September 21, 2018). Note: submitted to the DMDO through the FINANCIAL COMPTROLLER, although LED reports to the MD.

Forestry Reform Law of 2006" [For future attention: no mention of any "compliance certificate" found in the NFRL or in the LM (where it cannot be confused with any of the certificates mentioned in there: Concession, Prequalification, Annual Harvesting etc. Certificates)].
The other chapters are then presented, under the following headings: Meeting with FDA and Sun Yeun/ALMA Wood staff (Note: where the scope of the audit seems to be *ad hoc*), Condition at the camp (Note: about hygiene, safety etc.), Meeting with the community (Note: about implementation of the Social Agreement; and meeting with the CFDC about payment of the Cubic meter fees and other Social obligations), Field Verification (Note: for observation of the CFHP, and of illegal mining), Observations, Constraints (for the audit team), and Recommendation(s).

Review of the 'LFSP second report' titled 'Compliance Audit Report on ICC/Forest Venture of FMC-K and LTTC/CFMA-4' (September 17, 2018): see the Table of Contents of the 20 pages' report in **Annex 8.6** to this report, which illustrates that there likely no template is used to ensure a consistent reporting structure. Annexed to the report is a copy of the cover Memorandum sent to the DMDO (Note: although, again, LED is supposed to report to the MD directly).

This review was followed-up during Audit 4 under 6.2.4.2.

7.4.8.2 Public Affairs Division (PAD)

The "Public Affairs Division" can be found on the Organogram of the FDA (Oct. 2018)[97], with a direct reporting line to both the Managing Director (MD) and the Internal Auditor of the FDA.

As per the questions prepared in 5.1.3.6, the Public Affairs Division (PAD) is understood to participate in the chain of reporting on law enforcement, but its roles and responsibilities in the public disclosure of information, particularly in relation to law enforcement, need to be confirmed.

During Audit 3, a meeting was held on October 17, 2018 with the Manager[98] and HO staff of the PAD (a.k.a. Public Relations Dept., or Communication Division). The following findings are likely to feed, in the next report, into issues still being followed up in 6.4.6 (Reporting on law infringement, enforcement of sanctions, and public disclosure of information) in this report.

A PAD presentation to the 4th JIC[99] included:

- TASK OUTLINE, Ref. 3rd JIC Meeting Aide Memoire Annex 3 (June 2015)
  - Provide to the JIC an update on the achievement of 2015 priorities (Considering point 24 and Annex 3 of the aide memoire of 2nd JIC)
  - Distribute to the JIC members, a document that provides a detailed status of the implementation of Annex IX [Public information and transparency measures]. Indicate information /documents already available on-line [See 'PAD - Implementation of Annex IX' available as **Annex 8.7** to this report]. Identify any major bottlenecks in making information Public
  - Identify priorities for 2016 for communication and making information public
  - Clarify responsibilities for the 2015 Joint Annual Report

[97] In a 2012 version of the FDA's Organizational Chart it is identically positioned, but as "Information, Public Relations"
[98] New Manager appointed since before Audit 3
[99] JIC4_5.1_Communication by FDA PAD.pdf4

- KEY ACHIEVEMENTS TO DATE
  - Website currently uploaded with information/ Documents but needs improvement
  - Facilitated FDA/Ministry of Justice workshops in Monrovia and Buchanan
  - Conducted awareness on the VPA among civil society (…)
  - Facilitated print and electronic media publications and broadcast o.b.o. VPASU
  - Developed and publish FDA Newsletter "the Forest Echo" (Vol. 2 No. 002 October—December 2015)
  - Designated a Public information officer responsible for FOI/ received and appropriately responded to an FOI request for information from the Liberia Media Center
  - Developed an FOI Protocol
  - Developed an FOI Request Form
  - Developed a Checklist of documents on the FDA Website
- PRIORITIES FOR 2016
  - Continue to populate FDA website with all relevant information and documents identified by VPA Annex IX and others relating to the forest sector;
  - Establish FDA Documentation and Data Base Center within FDA HQ and make information available to the public
  - Continue Training for MACs in VPA Processes
  - Develop communication Plans for private sector and civil society
  - Enhance VPA awareness with FDA HQ and regional offices
  - Extend VPA awareness to communities through varied channels
  - Improvement of FDA website

For future attention: 1) Once the website is live again: IA to review the document titled 'FDA, Freedom of Information Protocols and Procedures, September 2016'; 2) Assess current effectiveness of implementation of the activities claimed above.

The review of a document titled "Assessment Report, Public Affairs Division of the FDA"[100] and considered as "draft ToR" by PAD staff in the context of the VPA provided the following information regarding FDA/PAD's roles and responsibilities (relevant extracts):

- Background. Annex IX sets aside "Public Information and Transparency Measures" and a set of Categories of Information that shall be "Routinely Published" by the Liberian Government as indicated in the VPA Art. 21.
- In November 2013, VPASU hired a consultant to analyze the Public Relations Division (PRD) the FDA's communications arm, with regards to its external and internal communications and outreach capacities and work. FDA Public relations and other staffs received training. It was subsequently decided to expand and rebrand the unit as the FDA "Public Affairs Division".
- A new restructure and mandate would ensure that essential information is routinely communicated to FDA stakeholders, partners and the public [See below].

[100] Produced by VPA SU, dated 15.12.2015. The previous MD was due to take it to the FDA Board for approval.

- In June 2014, to implement the VPA Annex IX, the PAD was trained again in communications and outreach strategies, operations and management, and assigned new office space equipped and furnished, with the following scope of work and structure:

  Roles and responsibilities of the PAD:

  "The [PAD] is the communications and outreach arm of the [FDA]. It is responsible for the collection and management of all data and information within the FDA and its auxiliary bodies and to place such information in the public domain. Additionally, the PAD shall routinely carryout outreach activities through briefings for FDA staff and engaging all FDA partners and other role-playing [MACs] to receive and provide information. *A Management Information System (MIS) will be developed within the FDA that the PAD will then use to access information internally for dissemination.*

  The PAD will use provisions in the VPA Annex IX and Sections 2.5 and 2.6 of the Freedom of Information (FOI) Act of 2010 to make information available to the public. The PAD will also liaise with other stakeholders and create public access to information by various means depending on the nature of the information and target audience, for example;
  a) Website
  b) Press conferences
  c) Multi-stakeholders implementation platforms
  d) Public meetings
  e) Public and private media outlets
  f) Newsletters and brochures
  g) Library and documentation services
  h) Others

  [In particular] the PAD shall routinely gather, collect, publish and/or maintain data relating to the following categories (ref. VPA Annex IX):
  (i) Information relating specifically to the [VPA]
  (ii) Information on management of the forestry sector
  (iii) Information on forest resource allocation
  (iv) Information on forest resource production
  (v) Information on forest fees and revenues
  (vi) Information on **law enforcement** in concession areas [*of particular relevance to this review*]
  (vii) Other information not mentioned but relevant to public interest

- The rest of the document covers
  - **PAD structure**, composition and professional network, with two Diagrams
  - **Sub-divisions and Roles**

    The Communications and outreach sub-division is the "Central Operating System" of the PAD. It gathers all information and data from within and without FDA, edits and analyzes them and ensures that all relevant information is available through FDA's communications hubs for internal and external access. (…)

    The Website Sub-Division is responsible to manage and operate the **FDA website**. It carryout all functions necessary to maintain a composite website that adequately serves/ addresses FDA's communication and outreach needs. As indicated in Annex IX of the VPA, the Website management section shall, at all times, maintain an updated VPA

communications / information, ensure public access and keep record and data of people accessing the web. (…)

The Document and Database Sub-Division functions as FDA's public library and information hub. It gathers and stores all documents relating to Annex IX and related information, photos, books, press releases, laws, policies, regulation, newsletters, publications, etc., maintains records of communications, requests for information, visitors' logs and PAD assets. The Document and Database Division maintains a research room helps in ensuring public access to information.

- **Relevance of the PAD** (It is expected that at completion of the project the PAD will be skilled enough to contribute to making the VPA Annex IX work)
- **Key Milestones reached** (PAD restructured and trained, FDA Newsletter, office fully equipped and functional, staff coached to upload documents and information, PAD carryout internal VPA awareness within FDA)
- **PAD work plan and results for 2016** (PAD handled FOIA requests, conduct VPA briefs for MACs and key stakeholders, manages communications across FDA offices, manages **FDA website**, assisted in publications)
- **Recommendations:**
  a) Follow-up/ refresher training course in communications and outreach
  b) FDA to provide special room to host the documentation and database center and to ensure internal cooperation in providing information and documents, to further improve public access to information;
  c) Hire a long-term website consultant to provide periodic upgrading and onsite mentorship to FDA website operators to bring them to speed. *As it stands, the current website operators need more training above their current levels*;
  d) PAD now equipped but underfunded (for mobility), and (…) its viability beyond VPA funding will hinge upon current management support.

Further notes from the meeting:

- Promised VPASU support did not materialize at the time.
- The 'External communication' activity produced media releases for the FDA website and a newsletter (4 issues with VPASU support).
- Staff has a perceived "extension" role (dissemination of info, sensitizing e.g. communities etc.) towards the outside, but complain they are "not mobile" (only went to the field in February, March and August 2018 to attend meetings and workshops).
- The PAD is not responsible to conduct independent field inspections (contrary to what has been gathered in A2R, 6.5.1 "to provide firsthand information"). This must refer to the need to verify the information before publishing: they must be on the scene to indeed "get firsthand information". But this is not about inspecting/ checking on legal compliance. For sure more a journalism role.
- A Memo is needed to advise the institution to make sure PAD is aware of what goes on.

Maintaining the FDA website is therefore one of the PAD's main tasks. The FDA website (www.fda.gov.lr) is the main channel for publication of information related to the Liberia forest sector and the VPA, which is a commitment from Liberia under the VPA (Art. 21). On several past occasions since December 2017, though, the

Independent Auditor has experienced problems accessing the Publications, and in particular the VPA documents' section, of the FDA website.

In that regard, the IA would like to recommend that the FDA could use a "Website uptime, downtime and performance monitoring" service and publish a corresponding report for its website.

The FDA website was also showing severe limitations in terms of content and updating of the content in its different sections.

One stakeholder (an international forestry consultant outside Liberia who has been following the situation of Liberia for many years) signaled the issue to the IA twice:

- "…The FDA used to publish the monthly SGS chain of custody reports on their website but *haven't done so for 12 months*. The Aide Memoire from JIC meetings is about the only resource regularly available to find out what is happening in Liberia" (27.09.2018)
- "The FDA has posted reports on their website but the monthly SGS CoC reports have not been included although these accurately report the situation in the forests (or maybe because of this, suggesting the FDA is not being transparent in not allowing these reports to be published, which the EU and DfID should seek to obtain" (27.10.2018).

Keeping the website down is also a serious obstruction to implementation of the National Benefit Sharing Trust Board (NBSTB) mechanism under the CRL, preventing public access to related information data by communities (See 6.5.2; see other related Issue HII 30 about the lack of LVD/LiberTrace support to the Mechanism).

The IA had already registered a 'Medium Impact' level ISSUE in the previous report about the Information section of the website often not being available, referenced MII 1 in the IA Progress DB. It was expected to be a temporary issue. Now, several times over the last months, and again at the time of writing these lines, the IA tried to reach the site, and consistently got an error message back[101].

The IA therefore updated the **ISSUE** and lifted it up to the 'High Impact' Level, now referenced **HII 24** in the IA Progress DB:

ISSUE HII 24
Impact level: High
Identified ISSUE: FDA website consistently down for months (not showing any sign of being maintained any more) and not fulfilling its key communication role in support of, and even obstructing LAS and NBSTB implementation
Recommendation(s): Urgently reactivate the website, regularly update content, and maintain maximum uptime; use a "Website uptime and performance monitoring" service and publish regular corresponding reports.

For future attention: once the website is live again: IA to watch the content. All in all, the apparent current closedown of the FDA website suggests a severe degradation of the situation i.r.o. ensuring transparency of information in the LAS implementation process.

[101] "Forbidden. You don't have permission to access /information/reports/ on this server. Additionally, a 403 Forbidden error was encountered while trying to use an ErrorDocument to handle the request."

The IA notes that the FDA has a Facebook page that was created on December 30, 2017[102]. Clearly, however, this can never replace an active, formal, fully informative and constantly updated FDA website.

Conclusions:

- The Audit 3 has allowed the IA to reach a much clearer understanding of PAD roles & responsibilities.
- PAD's public communications and outreach work increases participation, transparency and accountability in VPA implementation processes, aligning objectives, strategies and activities to maximize the benefits and create public trust for FDA.
- Significant activity was maintained up to 2015 or 2016, essentially with VPASU and some REDD support.
- It is questionable whether, or to what limited extent, efforts have been maintained since then. Limited information has apparently been produced since then (subject to posts on the FDA website), which would indicate that the Unit is currently running idle, in a context of underfunding of the institution.
- Most critical is the current closure of the FDA website, which denies the VPA implementation process from essential values including to publicly reflect the dynamics of the process to maintain the momentum, and denies national and international stakeholders from any related information.

Recommendations:

Urgently develop and implement an action plan to reactivate the PAD and ensure that it fulfills its key roles and responsibilities:

- General "extension" role vis-à-vis the VPA (dissemination of information, sensitization, **awareness on the VPA**) towards the outside: within FDA HQ and regional offices, and among civil society and communities
- Maintenance of the FDA website, the main channel for publication of information related to the Liberia forest sector and the VPA: **reactivate the website,** regularly update its content, and maintain maximum uptime.
- With regards to public disclosure of information, implementation of the VPA Annex IX on 'Public information and transparency measures', particularly in relation to law enforcement, to: routinely gather, collect, publish and/or maintain data relating to information on **law enforcement** in concession areas.

Follow-up during Audit 4:

Nothing has really changed or improved since the last audit. PAD is only reporting some news on the FDA website front page. This has included law enforcement re: wildlife, where fines are incidentally mentioned, but no proper section in the website. Nothing has been received from LED or other FDA divisions to publish on fines to forest companies.

[102] Involving the Manager, Intergovernmental Relations, formerly Director, PAD

7.4.9 Implementation of the role of Government, financing of the Liberian Forestry Authority (FDA) as a whole

This review was considered completed during Audit 3 and not significantly modified during Audit 4 and was therefore moved to under 7.4.8 (with the same heading) in this A4R Vol.2 for archiving.

During Audit 3, the IA Field audit team further explored the budgeting issue for the entire institution as per the following table, and – where possible – also analyzed the situation of specific departments or divisions of the FDA.

FDA Total budget

(Source: NATIONAL BUDGET, Fiscal Year 2018/2019 FOR THE PERIOD: JULY 1, 2018 TO JUNE 30, 2019 MFDP, MFDP website, pp.383-389)

	Goods and services: $201 923 Capital expenditure: No provision in the current financial year
3-year budget forecast	2016/17: $4 449 667 2017/18: $4 841 645 2018/19: $2 321 656 2019/20: $3 658 252 2020/21: $3 614 544
Conclusion on budget	Goods and services as a % of the total budget: 8.7% 2018/19 (current fiscal year) shows a drastically reduced budget. 2020/21 budget as a % of the 2016/17 budget: 81.2% There is a totally insufficient provision for FDA, and a downward trend. The key departments (Community Forestry, Commercial Forestry and Forest Law Enforcement) are even more limited in their funding, showing that the little funding received by the FDA for goods and services is being spent on issues not listed in the LM. Thus, the FDA in general, and the key departments in particular, are totally incapacitated to perform their functions according to the requirements stipulated in the Legality Matrix. Over and above the insufficient budget, there have been no funds released for goods and services to FDA from MFPD to FDA yet (1 July through to 23 October) further aggravating the inability of FDA to fulfill its functions as stipulated in the LM. The IA attempted to establish why the payments had not been made but was not successful in finding the reason why payments have been withheld.

The IA registered a new **ISSUE** about this (ref. **HII 29**) in the IA Progress DB:

ISSUE HII 29
Impact level: High
Identified ISSUE: Severe inability of FDA and key departments to fulfill their functions as per the LM, due to lack of funding from MFDP, particularly for goods and services, and to late release of funds
Recommendation(s): Allow FDA in future to prepare annual budgets accorded to the needs; clarify future funding mechanism under new Local Government Act; meanwhile a contingency plan is urgently needed to determine and address priorities.

Follow-up with SGS/LVD during Audit 3, indicating (for future attention of the IA*) a potentially self-sustainable forestry administration, financially:

- There is up to USD 12 millions of tax collection per year from the forest sector (+ welfare). In comparison, LVD costs 1.5 million and the FDA Budget [Note: excluding SGS/LVD] is about 3.7 million, mostly salaries.

  Follow-up during Audit 4 with LRA: evaluations of 1) the tax collection potential per year from the forest sector and 2) the (theoretical) financial self-sustainability of the forestry administration, on the basis of the total FDA Budget (above). That analysis has been done under 6.2.6.3 (LRA) in the Volume 1 of this Audit 4 report regarding Government forestry revenue collection.

Further notes from a meeting held during Audit 3 with the FDA Financial Comptroller:

- Fiscal year is from July to June the following year.
- Budgeting exercise involves Requested, Approved, and Actual budget. Theoretically, the budget request comes from the institution. In practice, it's MFDP who tell what they give ("Global Budget Ceiling"), divided in 3 amounts: Salaries, Goods & Services, and Capex, more or less itemized. IA to receive a copy of the letter.
- Then FDA resubmits an adjusted Budget (both hard and soft copies) with internal redistribution but without exceeding the global allocation, plus a Spending plan per month.
- Then MFDP then submits National Budget for Parliament approval.
- Once the National Budget is approved, the Spending plan is supposed to generate monthly allocations based on the Plan. In reality, there are often 1 to 3 months' delays, due to financial constraints.
- All revenues go to the central Government, through LVD and LRA.
- The MFDP contact person for FDA is the Deputy Minister of Budget and Planning.

Further notes from another meeting held during Audit 3 with the Deputy Minister of Budget and Planning at MFDP:

- There is admission of the situation, compromising budget allocations among the President's priorities and under financial constraints, and doing their best to support the different agencies.
- There have been cuts in Goods & Services, not in Salaries, admittedly creating imbalance between salaries (number of employees on the payroll) and available means to function and operate, and challenges as a lot of staff is not going to the field as a result (and stay idle in offices).
- Late payments of G&S and Capex are approved at this place (the IA must talk to the office of the Comptroller & Accountant General, responsible for payments to FDA). See table provided for payments pending ("Allotment" = "To Date" (authorized for office). Reasons for delaying payments may be "incompliances". The IA team did not succeed in liaising with the recommended person.

FDA/IAWG response to the Main R&Cs in the Audit 3 report

Issue: Inability of FDA and key departments to fulfill their functions as per the LM, due to lack of funding from MFDP, particularly for goods and services, and to late release of funds.

Response: "The Government recognized the financial constraints of the FDA. The FDA is currently working with the Ministry of Finance to increase budgetary support to the FDA. Additionally, the FDA is now a signatory to the Escrow Agreement between SGS and LRA, which provides funding to the LVD. International cooperation is assisting FDA in providing additional resources and support to compliment and strengthen the position of FDA to implement the forestry regulatory framework".

Mitigation Measure: Fiscal budget submitted by the FDA and approved by GOL

Responsible Department: Administration

Time Frame: Annually

Reference: GOL Fiscal budget

Remarks: Inadequate budgetary support

IA review of FDA/IAWG response:

- LVD remains funded to the same level and mechanism as it was before under SGS. Direct international assistance (aims at a self-financing forest sector / GoL and) is unlikely to grow. Budget for other depts. in current (2019/20) and next fiscal years, it remains to be checked and monitored for any improvement, whether FDA gets the budget it submitted.
- Meanwhile, Issue HII 29 shall remain open.

7.4.10 Implementation of the role of Government bodies (Other MACs)

7.4.10.1 Environmental Protection Agency (EPA)

Legality matrix requirements	
LM Clauses	**5** Environmental obligations **5.1** The Contract or permit holder and the timber processor have completed an Environmental Impact Assessment [EIA] that is approved by EPA 5.1.2 Environmental Impact Permit [EIP] issued by EPA to contract holder or timber processor prior to commencement of harvesting operations
Other clauses	An EIA document was prepared by the VPASU for the EPA and operators to apply in their harvesting and road construction operations.
Procedures	No evidence that procedures exist for EPA to conduct their field inspections in a consistent, credible and replicable manner across all concessions in Liberia.
Design of Templates	Field inspection checklist was prepared for the CFHP, which includes the requirements related to the EPA.
Comments and	EPA forestry guidelines: EIA, now called ESIA for

recommendations	Environmental Impact & Social Assessment, procedural guideline revised in 2017 Site visits should be done quarterly
Relevance in LM	Fully relevant

LM Clauses	**5.2** The contract or permit holder or timber processor implements the mitigating measures identified in its EIA as indicated in the Environmental Impact Permit 5.2.1 EPA environmental monitoring reports
Other clauses	N/A
Procedures	No evidence that procedures exist for EPA to conduct their field inspections in a consistent, credible and replicable manner across all concessions in Liberia.
Design of Templates	CFHP checklist exists but is not being used by either FDA inspection staff or EPA inspection staff.
Comments and recommendations	No consistent inspections are occurring of any forest concession in Liberia by the EPA.
Relevance in LM	Fully relevant

The main issue here is the lack of procedures and means for EPA to conduct quarterly field inspections in a consistent, credible and replicable manner across all concessions in Liberia, using the existing CFHP checklist.

LM Clauses	**5.3** Contract or permit holder or timber processor has disposed of equipment, fuel, wood refuse and related waste arising from its operations in a lawful and environmentally appropriate manner 5.3.1 EPA inspection report **5.4** Contract holder has maintained a buffer between its harvesting operations and water courses, and has specifically not felled trees that could threaten the flow or stability of the water course(s) 5.4.1 EPA inspection report
Other clauses	CFHP
Procedures	No evidence that procedures exist for either FDA or EPA to conduct their field inspections in a consistent, credible and replicable manner across all concessions in Liberia.
Design of Templates	CFHP checklist exists but is not being used by either FDA inspection staff or EPA inspection staff.
Comments and recommendations	5.3 should only be checked by EPA, while 5.4 should only be checked by FDA. No consistent inspections are occurring of any forest concession in Liberia by the EPA.
Relevance in LM	Fully relevant

The main issue here is the need to officially clarify the division of responsibilities between FDA (FDA should check 5.4) and EPA (EPA should check 5.3) and improve the LM accordingly (linking to 6.4.3 ‘Current relevance of the Legality matrix / Urgent need to update and review the Legality matrix, now 7.3.6).

LM Clauses	**5.5** The Contract or permit holder has in place procedures (i) to ensure compliance with rules regarding wildlife conservation, and (ii) to avoid harvest or trade in endangered or threatened plants and animal species 5.5.1 EPA inspection report
Other clauses	N/A
Procedures	No evidence that procedures exist for EPA to conduct their field inspections in a consistent, credible and replicable manner across all concessions in Liberia regarding wildlife conservation measures on concessions.
Design of Templates	Field inspection checklist was prepared for the CFHP, which includes the requirements related to the EPA, but it is not being used.
Comments and recommendations	In general, there are no credible field inspections being done currently of any of the forest concessions in Liberia.
Relevance in LM	Very relevant

Same as above (Indicators 5.1, 5.2)

Capacity analysis	
Budget (Source: NATIONAL BUDGET, Fiscal Year 2018/2019 FOR THE PERIOD: JULY 1, 2018 TO JUNE 30, 2019 MFDP)	
2018/19 budget	Salaries: $1 232 410 Goods and services: $271 747 Capital expenditure: $-
3-year budget forecast	2016/17: $2 534 870 2017/18: $1 597 245 2018/19: $1 513 064 2019/20: $1 454 127 2020/21: $1 416 153
Conclusion on budget	Goods and services as a % of the total budget: 18% 2020/21 budget as a % of the 2016/17 budget: 55.9% There is a totally insufficient provision of funds for the EPA, leaving the Agency incapacitated to perform their functions according to the requirements stipulated in the LM.
Staff	
Competency of inspectors	Field inspectors are not trained to understand the requirements of the EPA related to the Legality matrix. They are also not trained in the use of the CFHP checklist.
Number of staff	EPA has 36 inspectors. However, the EIA Division only has 3 persons to service the whole country.
Goods and services	
Vehicles	No vehicles
Fuel	No diesel
Tools & Equipment	No tools and equipment is issued to inspectors to complete their work, including the necessary uniforms and PPE to allow them to do infield inspections
Field accommodation	No accommodation

Per diems paid	No consistency in paying per diems
Capital Expenditure	
No capital expenditure budget is available in the current budget year for the EPA	
Performance level in conducting field inspections	
Schedule for field visits?	No schedule of field visits could be provided by the EPA of their activities. The IA asked for this, but it was never supplied to the audit team during the 3rd audit.
Compliance with schedule	It was confirmed that the field inspections are not occurring consistently of any of the concessions operating in Liberia. The main reason given is a lack of vehicles and other resources.
Issuance of penalties	Non-compliances can occur from stakeholder complaints, quarterly reports, monthly reports, ad-hoc verification. However, no fines have been issued in forestry in the last 5 years by EPA. Levels of sanctions: initially in EP Law 2003; not being revised or updated, but in US Dollars. From previous audits the VPASU indicated that the EPA does have a system by which infractions are evaluated and penalties allocated for the level of infractions. However, for further IA action, this was not checked as part of this audit and needs to be carried over to the next audit.
Payment penalties	See above
Closure of corrective actions	See above
Overall conclusion	
The EPA is virtually paralyzed in its ability to fulfill its responsibilities with regard to field inspections of forestry operations in Liberia. This is primarily due to a lack of resources within the EPA. Other issues include the lack of a clear division of responsibilities between FDA EIAD and EPA and the lack of procedures and training for EPA EIA inspectors.	
Recommendations	
It is recommended that the EPA first be supplied with the necessary resources that will allow them to fulfill their responsibilities regarding inspections of the all forestry operations in the country.	

Further notes from the Audit 3 meeting held on October 15, 2018 at the EPA Office in Monrovia, as per an interview with EPA staff:

- EPA has three main roles:
  1) EPA (Inspectors) is involved in the prior ESIA aspect, before a company can start operating, issuing an Env. Permit for all categories for forest contracts, renewed every 2 years. Process: see Project Brief, EPA EIA Guidelines 2007 (Guidelines for forestry related projects) developed by EPA R&D Division, revised 2017 as 'ESIA Procedural Guideline' (EIA became EISA). A little over USD 10'000 in EP fees collected every 2 years.

     For future attention: Where (including in LiberTrace) is it possible to monitor whether this is being done in a timely manner for all companies?

2) Concession monitoring, dealing with issues of different land uses and overlapping areas, including communities, mining etc.
3) Implementation of CFHP. More or less aware. “Train the trainers” did not happen. Not aware of checklist.

- Not involved in FDA pre-/post felling requirements implementation, only Env. Permit issuance and maintenance.
- EPA essentially looks at: soils, water, and biodiversity issues. Also overseeing national parks, conservation areas, coordinating wildlife, bushmeat issues…
- EPA is divided in counties, not corresponding to FDA’s (four) Regions, though.
- EPA is challenged with logistical means. VPA SU provided critical, but temporary support.
- Challenges for EPA: bad roads, broken bridges etc. Like for Operators: logs waiting alongside roads (talk to LTA).
- There is an EPA focal person stationed within the REDD+ LFSP Project at FDA.
- Reporting of infractions to the law, from field inspection reports or stakeholder complaints: to an EPA Committee making decision. Example given of an Operator’s forest camp (held confidential for this report). Outputs: inspection, CAR (“Recommendation” favored), sanction (suspension of operation (“Stop Order”) never occurred in forestry).
- Last fine issued? No memory of any fine over the last 5 years. “If there was any, it would have to be published on the EPA’s website, in newspapers, by MOJ”! For future attention: Verify statement and investigate reluctance to issue fines possibly based on the comment that “a fine triggers so much publicity [and/or may actually backfire on staff, maybe?] that it may be counter-productive (i.e. fine better not issued…).
- For EPA, a Norway-funded EoI has been issued for a Consultant to review EPA regulations and draft audit procedures. (June 19, 2017 meeting with SGS PM)

  Follow up with the Consultant (D. Rothe, 14.10.18): The consultancy contract started last week and will run for approximately 6 months. It is a project from the "LFSP" project that is implemented by FDA, with WB, and funded by Norway. The purpose is to develop national guidelines on community consultation (FPIC), and review EPA’s regulatory framework with respect to FPIC, which includes:

  - Env. Protection and Management Law, 2002
  - Regulations for 2002 EPM Law
  - Environmental & Social Impact Assessment Procedural Guidelines
  - Env Assessment Form (Checklist used by EPA to check ESIAs).

  The project is also reviewing (in less detail) the regulatory framework of FDA, MME, LLA, MoAgric and other key ministries to see if/how they handle community consultation/FPIC.

  EPA’s fieldwork seems to be limited to checking ESIAs, when they are granted and on renewal, which happens every 1,2 or 3 years, depending on the type of project. EPA’s field inspection capacity is considered limited.

'VPASec Updates' on the 7th JIC version of the Forward Planner (FP) (February 25, 2019), not yet taking account of eventual 7th JIC decisions

Regarding **Principle 5** (ENVIRONMENTAL OBLIGATIONS): "EPA provides official recognition of the checklist developed from the CFHP as standard operating practice for all inspection purposes in the forest sector. Continued involvement in Region 3. This JIC decision has not been addressed by EPA."

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issues regarding **Indicator 5.1** (Environmental Impact Assessment completed, approved by EPA):

- Oct – Dec 2018: "According to FDA, Contract holders must obtain environmental permit prior to forest operations
  According to the IA, EIA reports are indeed prepared and loaded on LiberTrace.
  Verifier 5.1.2 is no longer in use and needs to be removed from the Legality Matrix*".*

The above statement in the VPASec Updates regarding the IA does not truthfully reflect or fails to provide a clear reference to the exact IA's finding. See **ISSUE** raised about this (ref. **HII 35** in IA Progress DB) during Audit 4.

Regarding **Indicator 5.2** (mitigating measures in EIA and EI permit implemented): "Need to ensure increased engagement from EPA and future support from the next EU technical support."

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issues:

- Jul 2018: "SU assist EPA in issuing inspection reports. SU assist FDA in issuing annual compliance audit report [ACAR] for Region 3*".*
- Oct – Dec 2018: "According to FDA, this indicator is not possible for them to work on given that they do not have resource to do field monitoring. When VPASU was there, they helped produce EIA reports.
  IA confirms that this is not complied with."

The above statement in the VPASec Updates regarding the IA does not truthfully reflect or fails to provide a clear reference to the exact IA's finding. See **ISSUE** raised about this (ref. **HII 35** in IA Progress DB) during Audit 4.

Regarding **Indicator 5.3** (waste disposal) and **Indicator 5.4** (buffer zone with water courses): "n.a"

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issues regarding **Indicators 5.3 & 5.4**:

- Jul 2018: Same as Indicator 5.2

Oct – Dec 2018: "According to FDA, there is limited field monitoring of this indicator.
IA confirms that none of the verifiers of this indicator are compliant."

The above statement in the VPASec Updates regarding the IA does not truthfully reflect or fails to provide a clear reference to the exact IA's finding. See **ISSUE** raised about this (ref. **HII 35** in IA Progress DB) during Audit 4.

Regarding **Indicator 5.5** (wildlife conservation): "LIC or the GoL should require that documents are traced and uploaded on LIberTrace".

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issues regarding **Indicator 5.5**:

- Jul 2018: Same as Indicator 5.2

Oct – Dec 2018: "According to FDA, all contract holders are in compliance with Indicator 5.5. Meanwhile, the Conservation and CoC rangers are implementing the wildlife law and the CFHP.
IA considered these non-compliant as it could not find them on LiberTrace."

The above statement in the VPASec Updates regarding the IA does not truthfully reflect or fails to provide a clear reference to the exact IA's finding. See **ISSUE** raised about this (ref. **HII 35** in IA Progress DB) during Audit 4.

7.4.10.2 Ministry of Labor (MoL)

Legality matrix requirements	
LM Clauses	**8** Workers rights, health safety and welfare **8.1** Liberian nationals are given preference by contract/permit holders and timber processors in the employment of skilled and unskilled workers in keeping with Liberian Labor Law 8.1.1 Employment records or quarterly reports submitted evidencing local employment and preference to Liberian workers 8.1.2 Quarterly report submitted by contract holder or timber processor to the Ministry of Labor 8.1.3 Employment records, including register or employees along with their nationalities 8.1.4 Attestation of compliance issued by the Ministry of Labor in favor of contract holder or timber processor
Other clauses	N/A
Procedures	No procedures in place to allow for consistent and credible inspections by MOL inspectors regarding the employment of Liberian nationals
Design of Templates	No inspections templates exist to cover the requirements listed in Indicator 8.1 and Verifiers 8.1,1 through to 8.1.4 above.
Comments and recommendations	Implement procedures and templates to be used by all inspectors when conducting field inspections of forestry operations
Relevance in LM	Fully relevant

LM Clauses	**8.2** The contract/permit holder or timber processor pays to all its employees no less than the minimum wage established by law 8.2.1 Published minimum wage 8.2.2 Payroll 8.2.3 Annual inspection reports and/or letter of compliance 8.2.4 Workers payslips
Other clauses	N/A
Procedures	No procedures in place to allow for consistent and

	credible inspections by MOL inspectors regarding the implementation of Indicator 8.2
Design of Templates	No inspection templates exist to cover the requirements listed in Indicator 8.2 and Verifiers 8.2.1 through to 8.2.4 above
Comments and recommendations	Implement procedures and templates to be used by all inspectors when conducting field inspections of forestry operations
Relevance in LM	Fully relevant

LM Clauses	**8.3** The contractor/permit holder or timber processor complies with the maximum hours of work, leave and rest periods laid out in law 8.3.1 Working hour schedule 8.3.2 Leave records 8.3.3 Payment of overtime
Other clauses	N/A
Procedures	No procedures in place to allow for consistent and credible inspections by MOL inspectors regarding the implementation of Indicator 8.3
Design of Templates	No inspections templates exist to cover the requirements listed in Indicator 8.3 above
Comments and recommendations	Implement procedures and templates to be used by all inspectors when conducting field inspections of forestry operations
Relevance in LM	Fully relevant

LM Clauses	**8.4** The contract/permit holder or timber processor has neither employed anyone under the age of sixteen nor engaged in the practice of forced labor 8.4.1 Quarterly reports submitted to Ministry of Labor 8.4.2 Ministry of Labor inspection report
Other clauses	N/A
Procedures	No procedures in place to allow for consistent and credible inspections by MOL inspectors regarding the implementation of Indicator 8.4
Design of Templates	No inspections templates exist to cover the requirements listed in Indicator 8.4 above
Comments and recommendations	Implement procedures and templates to be used by all inspectors when conducting field inspections of forestry operations.
Relevance in LM	Fully relevant

LM Clauses	**8.5** The contract/permit holder or processor pays its (employer's) contributions to the employee pension and social security funds established by Liberian Law 8.5.1 Quarterly report submitted to Ministry of Labor 8.5.2 Ministry of Labor inspection reports 8.5.3 Attestation from National Social Security & Welfare Corporation (NSSWC)
Other clauses	N/A
Procedures	No procedures in place to allow for consistent and

	credible Inspections by MOL inspectors regarding the implementation of indicator 8.5
Design of Templates	No inspections templates exist to cover the requirements listed in indicator 8.5 above
Comments and recommendations	Implement procedures and templates to be used by all inspectors when conducting field inspections of forestry operations
Relevance in LM	Fully relevant

LM Clauses	**8.6** The contract/permit holder or timber processor has observed legal requirements concerning housing and sanitation as well as operational hygiene and general workers safety pursuant to the code of harvesting practices and guidelines issued by the FDA 8.6.1 FDA Compliance Audit Report
Other clauses	CFHP
Procedures	No procedures in place to allow for consistent and credible inspections by MOL inspectors regarding the implementation of Indicator 8.6
Design of Templates	Inspection checklist exists for the requirements listed in the CFHP for housing, but it is not being used by the MOL.
Comments and recommendations	Implement procedures and templates to be used by all inspectors when conducting field inspections of forestry operations.
Relevance in LM	Fully relevant

The main issue here is the lack of procedures and templates for MOL to conduct field inspections of forestry operations in a consistent, credible and replicable manner across all companies in Liberia to the requirements of Indicators 8.1 to 8.6.

Capacity analysis	
Budget (Source: NATIONAL BUDGET, Fiscal Year 2018/2019 FOR THE PERIOD: JULY 1, 2018 TO JUNE 30, 2019 MFDP)	
2018/19 budget	Salaries: $1 007 264 Goods and services: $793 603 Capital expenditure: $-
3-year budget forecast	2016/17: $1 500 419 2017/18: $1 401 291 2018/19: $2 062 745 2019/20: $1 837 354 2020/21: $1 716 974
Conclusion on budget	Goods and services as a % of the total budget: 38.5% 2020/21 budget as a % of the 2016/17 budget: 114% (14% higher than in 2016/17) The allocation of the budget to goods and services as a percentage of the total budget is realistic. However, it is not possible for the IA to assess what the desired budget should be for the MOL to fulfill its functions as stipulated in the LM.

Staff	
Competency of inspectors	Field inspectors are not trained to understand the requirements of the MOL related to the Legality matrix. They are also not trained in the use of the CFHP checklist.
Number of staff	MOL has 17 commissioners and 19 inspectors. The Labor law requires that a labor solicitor is available through MOL. However, there is no such appointment in the MOL There are also no officers appointed to conduct hearings when labor grievances are raised.
Goods and services	
Vehicles	No vehicles
Fuel	No diesel
Tools & Equipment	No tools and equipment are issued to inspectors to complete their work, including the necessary uniforms and PPE to allow them to do infield inspections.
Field accommodation	No accommodation
Per diems paid	No consistency in paying per diems
Capital Expenditure	
No capital expenditure budget is available in the current budget year for the MOL	
Performance level in conducting field inspections	
Schedule for field visits?	No schedule of field visits could be provided by the MOL of their activities.
Compliance with schedule	It was confirmed that field inspections are not occurring consistently of any of the concessions operating in Liberia. The main reason given is a lack of vehicles and other resources.
Issuance of penalties	Non-compliances can occur from stakeholder complaints, quarterly reports, monthly reports, or ad-hoc verification. MOL had country-wide inspections of all forestry concessions in April/May 2018. This resulted in several substantial fines having been issued e.g.: Company A was fined USD25 000 for violating employment conditions and employing aliens without work permits. However, this was a once-off inspection that is not related to planned inspections by MOL inspectors that are completed according to a set timetable.
Payment penalties	See above
Closure of corrective actions	See above
Overall conclusion	
The MOL is virtually paralyzed in its ability to fulfill its responsibilities with regard to field inspections of forestry operations in Liberia. This is primarily due to a lack of resources within the MOL.	

No field inspections are done on operators– only office inspections. Other issues include: lack of procedures and training for MOL inspectors, no labor solicitor available through MOL, no officers appointed to conduct hearings in relation to labor grievances.
Recommendations
It is recommended that the MOL first be supplied with the necessary resources that will allow them to fulfill their responsibilities regarding inspections of the all forestry operations in the country.

Further notes from the Audit 3 meeting held on October 17, 2018 at the MoL Office in Monrovia, as per an interview with MoL Minister and staff:

- The Minister is aware of the VPA (was in Parliament in 2003).
- MoL is challenged with capacity to check on operators for compliance, with so many requirements. Ministry staff do not have a vehicle to visit the Regions, so what about MoL Inspectors. Only motorcycles.

'VPASec Updates' on the 7th JIC version of the Forward Planner (FP) (February 25, 2019), not yet taking account of eventual 7th JIC decisions:

Regarding **Principle 8** (WORKERS RIGHTS, HEALTH SAFETY AND WELFARE), **Indicator 8.1** (nationals given preference for employment), **Indicator 8.2** (minimum wage), **Indicator 8.3** (maximum hours of work, leave and rest periods), **Indicator 8.4** (under aged, forced labor), **Indicator 8.5** (employer's contributions to employee pension and social security), and **Indicator 8.6** (housing and sanitation, hygiene and safety): "Need to ensure increased engagement with MoL"

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issues:

- July 2018 regarding **Indicators 8.3** and **8.5** (above): "Region 3 pilot: MoL assisted in producing reports based on reporting templates developed from the CFHP checklist*".*

  Note for future attention: Consistent with the IA's findings?

- Oct – Dec 2018 regarding **Indicators 8.1** to **8.6** (above): "Follow up with MoL still needed.
  IA reported non compliant on all verifiers on the basis of the fact that no documents are uploaded on LiberTrace".

The above statement in the VPASec Updates regarding the IA does not truthfully reflect or fails to provide a clear reference to the exact IA's finding. See **ISSUE** raised about this (ref. **HII 35** in IA Progress DB) during Audit 4.

7.4.10.3 Liberia Revenue Authority (LRA), Government forestry revenue collection

This is a new section being developed in the Volume 1 of this Audit 4 report (6.2.6.3).

7.4.11 Review of the current issuance of Export permits

Status: follow-up on previous issues from 6.4.3 in the Audit 2 report, completed and archived under 7.3.12 in the previous Audit 3 report, now regrouped with other related reviews in Section 7.5 in this A4R Vol.2 for archiving.

7.4.11.1 Background research

7.4.11.2 Follow-up

7.4.11.3 New evidence and findings, Export permit issuance and LVD reviews using the current regime

7.4.11.4 Updated conclusions and recommendations

7.4.12 Inconsistent enforcement of Legality matrix requirements / Many requirements of the Legality matrix not currently verified

Useful references:

- In the previous Audit 3 report: 6.4.13, 7.3.13;
- In the Audit 2 report (A2R): 6.4.2;
- In the Audit 1 report (A1R): 2.1.2 (in 2.1 Main C&Rs, derived from 6.1.1.4, 6.2.2, 6.2.2.3, and 6.3, themselves derived from the audit findings in 5.1.1.4).

Conclusions derived from A1R:

In practice, a certain number of requirements of the Legality Matrix (reportedly most of Principle 5 Verifiers; 86 out of 132 verifiers) are currently neither verified nor enforced by the government bodies in charge and are therefore being considered "not available" for legality verification in the COCS and treated as "non-auditable" in LiberTrace (or simply not showing, *at SGS/LVD discretion?*). Many processes in the FDA or other MACs are also considered to be "not in place" (reportedly those derived from VPA Principles 1, 2, 3, 5, 8, 9 and 11, in particular, and about fines and abandoned and confiscated timber). As a result, the IA was told, a new functionality was being developed in LiberTrace that would allow excluding "non-available" requirements

Follow-up during Audit 3:

SGS/LVD: The SGS Project Manager confirmed implementation of the new functionality in LT that allows excluding "non-available" requirements.

In other words[103]: The analysis conducted in the Audit 1 report concluded that many LM Verifiers or entire Indicators are not currently enforced (for different reasons, owing to the lack of action by the MACs in charge, which may be due to the lack of criteria, procedures or material means, or political will to control), and are therefore currently not verified for purposes of (among others) issuing Export permits and are treated as "non-available" or "non-auditable" in LiberTrace. This is clearly in contravention of VPA Art. 8,1a, which requires "Liberia to establish a system to verify that timber has been produced or acquired legally" as described in Annex II.

[103] From a paragraph initially placed in 6.1.2.4 VPA Art. 8,1a in this report.

The IA has not yet had the possibility to link this finding to the issue that some requirements are considered irrelevant (See 7.3.7, Need to update and review the Legality matrix) but it seems to go far beyond that. Further indications of the identified gap are provided in 6.4.7 and 6.4.15.

Export permits are being issued in the meantime, on the basis of a set of minimum requirements set by the FDA to issue an export permit[104]. That document covers what the FDA currently considers as the key risk areas in the Legality matrix. The Legality matrix, in that regard, goes beyond those minimum requirements*.

Point of attention (from conclusions in A1R, updated):

* The IA had yet to understand, on the basis of the requirements listed in the "Current regime for EPs" and in the Legality matrix, respectively: (i) "how far beyond" the LM goes (i.e. which requirements in the Legality matrix are or are currently not verified for Export permit issuance) and (ii) how these two levels of requirements are reflected in the COCS, in the LVD audits and in LiberTrace; this effort is now being undertaken under Chap. 7.5.2.4 on 'Legality' in this report.

Follow-up from A1R during Audit 2:

As noted in A1R, SGS had reportedly provided VPASU with a list of Verifiers that are "auditable" and suggested prioritization for implementation of the missing ones.

On 30.01.2018, VPASU prepared a Q4 version of the 'Forward planner' updated to reflect the current status of implementation. VPASU included an extra column in the dashboard to try to capture the information of individual Verifiers that are currently "switched on" (only completed for Principles 1 to 5, and 8). On 25.02.2018, SGS sent to VPASU the Forward Planner Master (Q4_January 6 2018) further updated to cover the other Principles.

VPASU had proposed the activation of 37 more Verifiers in LiberTrace on the basis of agreed reports, from currently 46 Verifiers showing in the system. On the basis of tests with two operators, and that several Verifiers are already being met with existing key reports, VPASU claimed this was achievable by June 2018. The number of activated Verifiers would reach 83 (63%), out a total of 132 Verifiers currently included in the Legality matrix. *The 83 Verifiers would become a requirement for issuing Export Permits beginning July 1, 2018*. Once reviewed, it was suggested that the proposal goes through an approval process involving first the FDA, then the NMSMC, and the LIC and finally the JIC.

On the basis of progress being made in the resolution of issues regarding the enforceability of some Verifiers, VPASU felt that the number of activated Verifiers could be increased even further, from 83. Such proposal was driven by the desire to show progress in implementing the VPA, allow the support projects to concentrate on the rest of Verifiers and build confidence in the new Government of Liberia that the FLEGT License is achievable in a not too distant future. It would also help explaining to international stakeholders what the Export Permit means and help participating operators showing progress in complying with the Liberia regulatory framework and with international standards.

The SGS and VPASU support projects as well as the key funding and advising agencies on the EU side were involved in that discussion.

[104] Requirements-for-export-permit-under-current-regime.pdf

As of March 2018, SGS/LVD regarded it as a [more?] “realistic” objective to first ensure that all the 46 Verifiers reflecting the Current Regime requirements for the export permit (SOPs, staffing, training, etc.) are made effectively auditable before moving forward.

For SGS/LVD it is already difficult for a “legal” company to get an EP based on the Current Regime checklist. Aiming at making 83 Verifiers auditable was therefore considered an unrealistic challenge because of, possibly among other reasons, some MACs not fully involved yet in VPA implementation (the Ministry of Labor was suggested as an example). There was a fear that ‘raising the bar’ could lead to stopping “probably all” exports.

Follow-up during Audit 3:

There was an attempt to clarify why some Verifiers do not show in LiberTrace for a particular company (whether it depends on the scope - type of contract, processing involved or not, etc.) in a fully logical, consistent and transparent way (possibly automated), or at SGS's discretion.

SGS/LVD: All Verifiers that are “On” appear for all operators, even if specific to FMC or to a TSC, etc.; then some are marked “not applicable” but all show.

Is this contrary to the IA’s observation? Future IA attention: new observation / testing in LT.

Note: FDA is said to be working on a “new LM” for CFMAs.

Follow-up during Audit 4:

For future attention had been the need to (i) procure the listings of the 46 Verifiers currently enforced and of the 37 Verifiers identified for the next enforcement tranche; and (ii) identify which Verifiers are already "available" for FLEGT Licensing (enforced by Gvt and supported by LiberTrace, including and beyond EP Current Regime requirements).

The LV Lead Auditor (LVD/FDA) provided a copy of the Desk Audit checklist (LV CURRENT REGIME TEMPLATE.docx) that LVD is using for Legality (“L”) based on the 'Current regime' requirements for Export Permit (See **Annex 8.20** to this report – ‘LV Current regime template’). The template is password-protected. It has 11 pages for 10 Principles. It contains 48 Verifiers, pertaining to 24 Indicators, and the understanding is that these 48 Verifiers that are currently enforced ("switched on"/activated) cover only just the 'Current regime' requirements for Export Permit, not more.

Contacted, the VPA-SU2 TL on 04.11.2019 confirmed an earlier discussion and advised the IA Team that VPA-SU2 considers necessary for LVD/ LiberTrace to activate new verifiers. It provided a table comparing what in their opinion is being verified by LVD (Applied Export Permit Verifiers, vs. Libertrace Activated Verifiers), which is less than the 46 activated, and what is being proposed to activate (Proposed Verifiers for Activation). VPA-SU2 are proposing to add 32 verifiers, which would result in activating a total of 78 verifiers or 59%. At present verifiers being applied by FDA are coincidently 32 verifiers or only 24% from 132 total.

Among the anticipated “Cons” by VPA-SU2 for discussion with the partners, possibly to be included into the Tech JIC agenda:

- FDA is not enforcing even the existing 46 verifiers, adding verifiers could be not be viable based on existing FDA budget and economic conditions;
- Some verifiers being enforced are still weakly complied with (e.g. AOPs), verification is not complying with the legal framework;
- No FDA budget to add additional inspection costs for LVD verifications;
- SGS and LVD are not trained to verify additional to 46 verifiers.

Among the anticipated "Pros" by VPA-SU2:

- Would provide a more realistic picture on where Liberia is in meeting VPA commitments in order to cover 100% of verifiers to meet;
- Demonstrate a more fair picture of what Liberia is already complying with in respects to VPA that is not being recognized (e.g. Principle 5 on Environment, Principle 8 on Labour), which in turn will motivate EPA and MOL to verify compliance with the verifiers under their responsibility;
- Allow companies to provide and upload additional information to LiberTrace (e.g. labour reports being delivered to MoL) for verification purposes;
- Would allow to correctly cost for sustainability estimations, FDA investment needed in Legality Verification, Commercial Forestry and new Liberia Licensing Departments to implement the VPA Legality Assurance System;
- Would identify additional training and capacity building needs not yet covered to 2019 by SGS under previous LVD project and side agreements for future budgeting by FDA and assigning human and financial resources commensurate with what VPA commitments;
- Address the full picture of sustainability beyond previous and existing technical assistance capacity building needs to meet VPA requirements.

It seems these new suggestions from VPA-SU2 are similar, and do not show real progress since then, to what was reported above under 'Follow-up from A1R during Audit 2'. The IA's conclusions and recommmendations below therefore remain unchanged.

Main conclusion derived from A1R:

Many **requirements in the Legality matrix** are currently **not being checked (**whether for current export permit issuance or otherwise). While this may be acceptable from a VPA implementation process standpoint until the VPA becomes operational*, while some of these requirements may not be backed by law**, and while some go beyond the minimum requirements for current export permit issuance, this situation would clearly not enable FLEGT Licensing that is based on full compliance with the requirements of the Legality matrix***.

* However the VPA can only become operational after the whole LAS functionality has been evaluated successfully[105]. Clearly, that the VPA is not yet operational cannot be taken as an excuse for not starting checking all (enforceable) Legality matrix requirements in due course (i.e. for current export permit issuance and beyond for the whole Legality matrix): the LAS must be implemented before, and

[105] The VPA Art. 13 governs determination of when the Licensing Scheme can become operational, conditional on a successful joint technical evaluation of the LAS, according to objectives and criteria set out in Annex VI. Annex X states that it is the JIC that shall recommend the date on which the FLEGT licensing scheme will start operating.

so that, it can be evaluated. This has been incorporated in the suggestion for an LM enforcement plan (below). On the legitimacy of applying minimum requirements for current EP issuance while the VPA is not yet operational, see 6.4.12.

* The extent to which the Legality matrix (LM) is already binding as such has now been clarified with the IA's Legal expert. The legal requirements in the LM that are transposed from Liberian Law (presumably all the Principles and Indicators) are regulatory and binding; these will obviously remain binding when the VPA becomes operational and the LM therefore becomes binding. The other requirements of the LM that are not contained in the Law are definitely not currently regulatory and binding as such; some elements of the LM are, and will always remain of an indicative or informative nature only, among the Verifiers, Verification Guidance (Objective, Regulatory Control), Verification method (Description, Verification means), and Verification frequency. This can probably only be determined on a case-by-case basis, rather than for entire categories of elements in that enumeration. However, elements that are not *binding* like law may still be relevant and *enforceable* in practice simply because they have been accepted by the stakeholders as part of (and proof of compliance with) the LM (hence the need to ensure that all LM elements are enforceable), regardless of whether the LM is, or is not yet binding as part of the VPA being, or not yet being operational.

Note: "Legality Verifiers: Verifiers are evidence the LVD inspectors/or assessors will look for when evaluating if the specific norm or indicator has been met. This list is *not exhaustive* and *the assessor may use additional means* of verifying the relevant indicator if required" (VPA Ann. II, A2.2 (table)). The clear intention is indeed that the list of verifiers provided in the LM is indicative (and could be modified subject to JIC approval – See 7.3.1.16 on VPA Art. 26,3).

* Some of the "other requirements that are (currently) not contained in the Law" may also become regulatory once adopted as such through a formal process (See 7.3.5.8).

** See above: some requirements in the Legality matrix reportedly not contained in the legislation and yet *enforceable.*

*** In the VPA, FLEGT Licensing is based on *full compliance* with *all* the requirements of the Legality matrix:

- "…the COCS checks with the LVD database that there is *full compliance with the LD* prior to each sale …"[106];
- FLEGT licenses will not be issued unless *all requirements of the LAS have been complied with*. (…)[107]
- The [LLD] will … issue FLEGT licenses to export consignments of timber products complying with *all the requirements of the LAS*. The licensing process consists of the following phases: (…)

  (b) The LVD verifies that the exporter and possible suppliers associated with the export consignment concerned *comply with the Liberian legality definition* (…)

[106] VPA Annex II (Legality Assurance System of Liberia), 5 Chain of Custody System, 5.12 Data reconciliation
[107] VPA Annex II (Legality Assurance System of Liberia), 6 Failure to comply with the LAS

– If the LVD confirms that *there is full compliance with the LD*, the LLD issues without delay a FLEGT license to the export consignment concerned. (…)

– If *any non-compliance is detected* at this stage, the LVD will notify the LLD that *no FLEGT license can be issued* (…). The LLD will notify the applicant that *the application for a license has been rejected* and of the reasons for this rejection. (…)[108]

*** This is however being questioned as possibly unrealistic, impractical and counter-productive (See 6.4.6).

The lack of a clear division of roles and allocation of responsibilities, especially in the Legality Matrix, has been identified under 6.1.14.2 in A4 Vol.1 as one more reason to review/update the LM and for the LM enforcement plan (below).

Main recommendations derived from A1R (updated):

JIC to consider preparing and implementing a gradual '**Legality matrix enforcement plan'**, in combination with the Legality matrix revision process (as analyzed above in 6.4.3, now archived in 7.3.6, as in fact two parallel processes). Subject to existing relevant initiatives, and to the above clarifications (*/**), collaborate with the responsible law enforcement bodies and VPA implementing partners, and consult the stakeholders in order to urgently:

(i) On the basis of current requirements in the Legality matrix, **identify those requirements of the Legality matrix that are not currently being verified or enforced** (in the absolute, whether for Export permit issuance or otherwise); repeat the exercise again after the enforceable legal requirements in the Legality matrix will have been confirmed as part of its revision;
(ii) **Analyze the reasons** for such situation (lack of a clear division of roles and allocation of responsibilities; requirements not currently verified for EP or otherwise enforced), and **inform the Legality matrix revision** process (6.4.3);
(iii) Where possible (subject to the related verification in 6.4.3) use **attestations of regulatory compliance** with administrative obligations **issued by the relevant bodies** in non-critical areas of the Law for forests and people, meaning operator is "under control" in that area, with the idea to replace a number of administrative requirements that would be covered by such attestation;
(iv) Where relevant, undertake law reforms or issue ministerial instructions to officially **remove, waive or suspend the application** of specific, irrelevant requirements;
(v) For those legal requirements that are not currently being verified and enforced for Export permit issuance or otherwise, but should be so, publish and implement a remedial **law enforcement action plan**;
(vi) Clarify which non-conformances shall be **blocking for a FLEGT License** and which shall not, if not all as is currently the case (See 6.4.6); and
(vii) Establish a **monitoring and evaluation mechanism** for the whole process.

The analysis of this VPA Art. 8,1a conducted in the Audit 1 report (6.1.1.4) also led to (i) the recording of an **ISSUE** (ref. **HII 3**) in the IA Progress Database:

ISSUE HII 3
Impact level: High

[108] VPA Annex II (Legality Assurance System of Liberia), 7 Licensing

Identified ISSUE: Inconsistent enforcement of LM requirements for Export permit and else
Recommendation: Proposed Legality matrix revision & enforcement plan.

7.4.13 Communication and transparency

Useful references

- In the previous Audit 3 report: 6.4.16, 7.3.14;
- In the Audit 2 report: 6.4.14;
- In the Audit 1 report (A1R): 2.1.12 (in 2.1 Main C&Rs, derived from 6.1.1.6, themselves derived from the audit findings in 5.1.1.6).

The VPA Art. 19,3 requires the "JIC to consider any matter relating to effective VPA implementation, in particular:
(g) publish an annual report (Details of the content in Annex IX)".

Updated evidence found regarding the publication of **JIC Annual reports** (ARs) by the FDA:

- Pre-VPA 'Progress report ("Moving Towards VPA Implementation") 2011-2012';
- First (and so far last) 'Joint Annual Report 2014 ("Implementing the Liberia-EU VPA")': initially planned for Q1/2015, then 09/2015, finally for the 2nd JIC (Source: JIC Aide-Memoirs); finally published for the 3rd JIC (Jan 2016); 2015: Ebola then delayed both progress and publication of an annual report. In the 2014 report, the commitments still exceeded the achievements, but this should be gradually reversed in subsequent progress reports (EFI comment);
- 2015 Joint AR planned to be published before the end of 2016 (AM 3rd JIC).

The responsibility of drafting the ARs (and, in particular, to finalize the 2015-16 draft AR early 2018) is on both parties. EU and LIC members shall agree and take ownership on its content. Typically the VPA Secretariat (and VPASU) helps the Liberian side with the drafting, the Facilitator supports to make sure it happens and stakeholders are consulted and provide their inputs, and EFI and the Facilitator also help the EU side with the editing.
(Communications with EFI and the FLEGT Facilitation)

As of 17.07.2018 the current draft of the 2016 draft is now with EFI communications for editing. Efforts have been made between the VPA Secretariat, EFI and the Facilitator to ensure that both annual reports up to the end of 2017 are finalized and published by the 7th JIC in December 2018 (FLEGT Facilitation). The IA understands there are two pending annual reports up to the end of 2017, so likely one for 2015-2016 and one for 2017.

Main conclusion (from A1R, updated): Despite the VPA requirement (Art. 19,3g) for the JIC to publish an annual report, the 2015 and 2016 (and now 2017) annual reports [were] yet to be published.

Follow-up during Audit 3: The EU Delegation and FDA are currently reviewing a draft annual report for 2015-16 before dissemination for consultation to parties. Drafting of the VPA annual report 2017-18 will start shortly. (EFI, 05.02.2019)

Main recommendation (from A1R, updated): As per VPA Art. 19,3(g), JIC shall consider any matter relating to effective VPA implementation, in particular publish all outstanding progress reports and publish future annual reports in a timely

manner going forward, focusing on achievements and work in progress (Details of the content: in VPA Annex IX).

Clearly, the JIC has not managed to publish a Joint "annual" report every year (only 2014 so far) and the IA therefore raised an **ISSUE** (ref. **MII 5**) in the IA Progress DB about this as a result of Audit 1, now updated after the Audit 4 (See 6.2.2.3, LVD monthly reports no longer publicly available):

ISSUE MII 5
Impact level: Medium
Identified ISSUE: Annual reports not yet published by the JIC for 2015 to 2019 and LVD monthly reports no longer publicly available
Recommendation: Publish outstanding annual progress reports and LVD monthly reports.

Note: In Cameroon, an evaluation of the level of implementation of the VPA Annex VII on Transparency of information has been conducted for the second time in 2018 by the appointed Independent Observer (FODER)[109]. A website dedicated to the Annex has been put in place, allowing public scrutiny of the publication of information pertaining to the Annex.

7.4.14 Timber products that are subject to the LAS

This review was considered to have been mostly completed in the previous report and was therefore moved from 6.4.17 hereto.

Useful references:

- In the previous Audit 2 report (A2R): 6.4.15;
- In the Audit 1 report (A1R): 2.1.13 (in 2.1 Main C&Rs, derived from 6.1.1.3, themselves derived from the audit findings in 5.1.1.3).

Conclusions: VPA Annex I's list of timber products subjected to the LAS (and its FLEGT licensing component) not consistent with the list of products to which the EU Timber Regulation (EUTR)[110] applies (EUTR Annex[111]), which has the following negative consequences:

- By adding (or not excluding) products, in comparison with the EUTR, the VPA Annex I is making these products "subject to FLEGT Licensing" in Liberia whereas the EUTR does not apply to them. This is the case for HS Code 4417 (Tools etc. of wood), and also for HS Code 4415 (Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood, where "*packing material [is] used exclusively to support, protect or carry another product placed on the market*"); and
- By omitting products, in comparison with the EUTR, importers in the EU will not be able to use a FLEGT License from Liberia as a way for these products to "*be considered to have been legally harvested for the purposes of this Regulation*" (EUTR, Art. 3). This is the case, in particular, for 'parts, of wood, of

[109] https://forest4dev.org/images/documents_pdf/RAPPORT_EVALUATION_TRANSPARENCE_APV_FLEGT.pdf
[110] REGULATION (EU) No 995/2010 of the EUROPEAN PARLIAMENT and of the COUNCIL of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market
[111] Timber and timber products as classified in the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 (1), to which this Regulation applies

wooden furniture' (HS Code 9403 90 30), although these are likely to have an export market in future from Liberia.

FDA comment to the Audit 2 report (28.11.2018): "the forestry sector in Liberia is not involved with the permitting of these export products as named by the IA such as (Packing cases, boxes, crates, drums, and similar packings, etc.) at present. And therefore, the FDA advises the IA to please look at the legality definition of Liberia forest products for VPA."
IA response to FDA comment: These products are not being imported at present but the IA anticipates that this could become an issue. The FDA advice is acknowledged but cannot be right since, precisely, these products under HS Code 4415 are included in the VPA Annex I making these products "subject to FLEGT Licensing" in Liberia.

Recommendation: Make the VPA Annex I list of timber products subjected to the LAS consistent with the product list in the EUTR.

- Consider removing HS Code 4417 (Tools etc. of wood) and HS Code 4415 (for "*packing material used exclusively to support, protect or carry another product*") from the VPA Annex I, and other added (or not excluded) HS codes, in a future revision of the Annex, since the EUTR does not apply to them.
- Consider adding HS Code 9403 90 30 (Wooden furniture, Parts, of wood), and other omitted HS codes, to the VPA Annex I in a future revision of the Annex to promote their legal trade through FLEGT Licensing in support of EUTR compliance.

This has led (i) to the recording of the **ISSUE** no. **LII 1** in the IA Progress DB:

ISSUE LII 1
Impact level: Low
Identified ISSUE: Annex I adds or omits products, compared to the EUTR, to the trade's disadvantage
Recommendation: Make Annex I consistent with the list of products in the EUTR Annex.

7.4.15 Government forestry revenue collection

This new section will in future receive the content of reviews completed in 6.2.6.3 (LRA, Government forestry revenue collection) where possible making reference to relevant P&Is in the LM. It is still empty.

7.5 Review of the issuance of Export permits, Track record of activity'

Useful references
- In this Audit 4 report: 6.3, 7.4.10;
- In the previous Audit 3 report: 7.3.12;
- In the Audit 2 report: 6.3.3, 6.4.7;
- In the Audit 1 report (A1R): 2.1.3 (in 2.1 Main C&Rs, derived from 6.3, themselves derived from the audit findings in 5.3, also in A1R).

This section first reuses the work completed during Audit 1 (in Audit 1 report, 6.3) and incorporates additions from Audit 2 and follow-up during Audit 3.

Previously reported issues were moved to under Chap. 6.4 in the Audit 2 report, already, for follow-up.

As per 6.0, for new, or reviews in progress in Ch. 6.3 in the Audit 2 report (A2R):

- If the review was still incomplete, the review will remain in Ch. 6.3 in this report
- If a new issue was raised in Ch. 6.3 as part of the review, and follow-up is required to clarify C&R, the issue was moved to Ch. 6.4 in the Audit 3 report for further investigation and C&Rs were now provided in the same Ch. 6.4 – Such follow-up was then already moved to 7.4 in the Audit 3 report for archiving;
- If no follow-up is required, the discussion was moved to 7.4 in the Audit 3 report for archiving.

See 'Track record of activity' (5.4) in relation to this theme:

- Information request (Questionnaire);
- Responses received, information gathered, further action.

Responses to the Questionnaire have allowed the IA to build the following evidence and findings.

7.5.1 Introduction to the assessment (as per the Questionnaire)

Export permits for timber are currently being issued by Liberia.

They are issued for each export shipment on the basis of attested compliance with a certain number of traceability, fiscality and legality requirements. As such they should constitute tangible evidence that the products derive from legally harvested timber in Liberia (or from third countries *via* Liberia). They are therefore a *de facto* precursor of the FLEGT Licenses. As such they also potentially represent an important source of information that EU importers should be able to already use, in the absence of FLEGT licensed timber from Liberia, to meet EU Timber Regulation (EUTR) Due Diligence requirements.

Do they currently provide such reliable evidence of traceability and legal compliance?

This investigation, working backward from the issuance of the export permits, covers key requirements of the LAS, linking to different compliance areas.

7.5.2 System-based assessment of Export permit issuance

7.5.2.1 Generalities

Where is the Export permit established in the Liberian laws & regulations? Export permit vs. Export license? To whom is it issued?

The Export permit (EP) is required by law. Section 13.8,a. of the National Forestry Reform Law (NFRL, 2006) establishes the EP requirement, to be issued to the exporter.

However, Section 42 (a, f) of the FDA Ten Core Regulations (Timber Export License Fee and License) also establishes that "*No person shall export Forest Products from Liberia without a timber export* ***license****" (and that "Each timber export license is valid for one shipment of Forest Products…*"). Such "timber export license" only refers to (and is conditional on) the payment of fees (export license fee and "all other Authority-administered fees"). But it is not different from, and not additional to the EP; the export license is rather understood to be covered by the

EP that is also conditional on the payment of all fees. The EP is therefore considered to be serving as Timber export *license* as well.

For which products? For exports to all destination countries, either EU or non-EU countries?

Section 13.8 a. of the NFRL establishes the EP requirement for all "Forest Products", where "Forest Product" means "*Any material or item derived from Forest Resources*" (NFRL 1.3, Definitions).

It is assumed that the law, where it established the EP (i.e. in NFRL, 13.8 a.), did not (unlike the VPA) discriminate among export destinations. Therefore, EPs are being issued to all, EU and non-EU countries.

By whom? Where is the mandate given to the responsible Government body or agency, for issuing export permits, documented?

Sections 13.8 (a, b) of the NFRL state "No person shall export Forest Products without an export permit from *the Authority*", where "the Authority" means "The Forestry Development Authority (FDA)…" (Section 1.3 Definitions) and "The Authority, *in collaboration with the ministries of Finance and Commerce*, may issue export permits for Forest Product".

As to which FDA department(s) is (are) in charge of approving and issuing the EPs, the Manual of Procedures[112] of the Legality Verification Department (LVD) of the FDA created under the VPA (SOP 22, Steps 2, 5, 7, 9, 10; SOP 26, Step 1) provides that:

- An Export Permit Request (EPR) is submitted to the LVD by the Exporter;
- The EPR is approved both by the LVD (following an Export Permit Inspection by LVD COC Inspectors) and by the [future] Liberia Licensing Department (LLD) – also to be created under the VPA to issue the FLEGT License - for final review;
- The EP itself is then formally issued (approved and signed) by the LLD.

Until the LLD is created, the FDA Commercial Forestry Dept. (CFD) is said to be currently responsible for issuing the EPs. *This situation will need to be assessed by the IA during the next audit*, as it may create confusion, and further conflicts of interests*, since the corresponding decision-making level by the CFD seems to be below that of the Auditing section of the LVD and the LVD has the powers to audit the CFD (and concentrates further conflicting roles in the same hands?*).

* For future attention (*irt* conflict of interest issues under 7.3.7.3)

Is there any reference in the law for: "The FLEGT Export License will eventually replace the Export Permit[113]"? Or is it a mere assumption?

According to the IA's Legal expert, it is not [and could not be] in the NFRL or any Liberian law for the reason that these laws were not made with VPA in mind.

What evidence is there, then, that the FLEGT License, once it becomes effective, will replace the Export Permit, and of the transition from the current system (Export permit) to the future system (FLEGT licensing)?

The FLEGT License will be mandatory only for the EU market[114]. Other markets might still request an Export Permit/License (which may therefore continue to exist in parallel).

[112] 'LR_Manual of Procedures LVD staffs_V1_2016_07.pdf'
[113] As mentioned by the VPASU Manager in a correspondence with the IA

However, it is expected that the logger who satisfies the more exacting FLEGT Licensing checks would rather have a FLEGT License as opposed to an ordinary export license (for better trade recognition).

Are there references to the EP, and to the transition, in the VPA? Only in the Annex VIII of the VPA can 'Supporting measures' be found (5.2, 'Establishing the Liberia Licensing Department'), for actually "phasing out export permits"; and in Annex VII is a 'Milestone' provided (in "LAS: licensing established") for "Export permits phased out and application of the new licensing system by LLD".

What general procedures and underlying regulations govern just the Export permit issuance step by Liberia?

According to the IA's Legal expert, from research thus far, only the NFRL is the primary authority on EP.

But Section 13.8 a. of the NFRL that establishes the Export permit requirement does not seem to provide any further regulations for the actual issuance of EPs[115].

And is the export permit issuance step (and process) reflected in the COCS and in the COCIS? Where? How?

In relation to the COCS, Sections 13.5 (a, e) of the NFRL state: "To facilitate verification of applicable taxes and fees and legal origin of Timber *prior to the issuance by the Authority of any export permit, the Authority shall establish and maintain a Chain of Custody System for all Timber*" and "… *no Person shall import, transport, process, or export Timber unless the Timber is accurately enrolled in the Chain of Custody System*". This clearly links the issuance of EPs to the COCS.

This is also reflected in the following Standard Operating Procedures (SOPs) for CoC and the related Work Instructions in the 'Manual of Procedures for LVD staffs'[116]:

- 'Export Permit Request' (Chap. 22.1);
- 'Export Permit Verification' (Chap. 23.1); and
- 'Export Permit Issuance' (Chap. 24.1).

For what products?

Section 13.8 a. of the NFRL further states "No Person shall export *Forest Products* without an export permit from the Authority". However, Section 13.5 a (Chain of Custody) of the NFRL requires the application of a Chain of Custody System for all Timber (See above), where "Timber" only means: *Cut wood or logs*.

"*Currently the COCS issues export permits only for logs and primary processed wood (HS Code 44.03 and 44.07)*" as stated by SGS/LVD. The IA is satisfied that the COCS currently (already) applies to these HS Codes that are also included among the "timber products" listed in Annex I of the VPA and to which the FLEGT licensing scheme shall therefore apply (Art. 3,2):

HS CODES	COMMERCIAL DESCRIPTION

[114] At which stage it is said it will replace the Certificate of origin and the current "Export License", with an Export Specification issued according to the regulation

[115] Apart from Section 13.7 (Adherence to International Market Requirements) of the NFRL, which requires that "*After the Authority has established standards under Section 13.6 … [Scaling and Grading of Timber and Forest Products], no Person shall export Timber or Forest Products except in conformity with the standards*".

[116] 'LR_Manual of Procedures LVD staffs_V1_2016_07.pdf'

4403	Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared
4407	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm

However, this implies that all the other timber products listed in the VPA Annex I (See below table), to which the FLEGT licensing scheme shall however apply, are currently *not enrolled* in the COCS. This is a gap, considering that the FLEGT licensing scheme shall apply to it in future.

Table 15: Other timber products in VPA Annex I, currently not enrolled in the COCS

HS CODES	COMMERCIAL DESCRIPTION
4401	Fuel wood, (…) including rubber wood chips
4406	Railway or tramway sleepers (cross-ties) of wood
4408	Sheets (…) of a thickness not exceeding 6 mm
4409	Wood (…) continuously shaped (…)
4410	Particleboard, oriented strand board (OSB), similar board (…)
4411	Fibreboard (…)
4412	Plywood, veneered panels and similar laminated wood
4414	Wooden frames (…)
4415	Packing cases, boxes, crates, drums (…); pallets (…)
4416	Casks, barrels, vats, tubs and other coopers' products (…)
4417	Tools, (…) broom or brush bodies and handles, of wood (…)
4418	Builders' joinery and carpentry of wood, including (…) panels
9403.30	Wooden furniture of a kind used in offices
9403.40	Wooden furniture of a kind used in the kitchen
9403.50	Wooden furniture of a kind used in the bedroom
9403.60	Other wooden furniture

Follow-up during Audit 3:

The IA needed to register an **ISSUE (**ref. **HII 31** in the IA Progress DB) about this:

ISSUE HII 31
Impact level: High
Identified ISSUE: Apart from logs and primary processed wood (HS Code 44.03 and 44.07), all the other timber products listed in the VPA Annex I are currently not enrolled in the COCS. This is a clear gap, considering that the FLEGT licensing scheme shall apply to them in future

Recommendation: Apply the COCS to all timber products listed in the VPA Annex I that are being exported from Liberia and to which FLEGT licensing will thus apply, including fuel wood (HS Code 4401) that includes rubber wood chips.

LiberTrace, the software developed and implemented by SGS to serve as COCIS in Liberia, could reportedly cover many more products (plywood, veneer, chips etc.), but the scope of the (then current) SGS contract was limited to primary and secondary processing.

For follow-up during Audit 5:

These other timber products listed in the VPA Annex I (See above table), and to which the FLEGT licensing scheme shall however apply but are currently not enrolled in the COCS, may therefore not currently be issued EPs either (in case they are exported); the product that might be mainly concerned is "Fuel wood, (…) especially rubber wood chips" (HS Code 4401), so:

- Are 'Rubber wood chips' currently being issued EPs, or not?
- Is any other 'Fuel wood' (in round wood) currently being issued EPs, or not?

This links to the discussion in 6.3.3.3 (Re-assessment and further assessment of EP Issuance during Audit 3) regarding EPs being issued outside LiberTrace, without any consultation with either SGS or the LVD, and plantation logs currently being exported outside the Traceability system.

Are records (list, copies) of all Export permits issued being kept? Where? Has the Independent auditor access to these records?

The IA has been given (read-only) access to the LiberTrace software (LT).

SALES, EXPORT PERMITS section of LT: a number of EPs are documented in various positions (see below categories).

Number of EPs in each category (as of 180116):

- SUBMITTED 1
- WAITING FOR INSPECTION 1
- UNDER REVIEW 0
- WAITING FOR OPERATOR APPROVAL 2
- WAITING FOR FINAL APPROVAL 2
- APPROVED 33
- REJECTED 7
- CLOSED 67
- CANCELLED 32

The section also contains a number of relevant tabs: EXPORT PERMITS, LOG PRODUCTS, INSPECTIONS, DOCUMENTS, and STATUS HISTORY. The IA noted the details of available information to the IA on or from each tab.

Details of available information, on the EXPORT PERMITS tab:

- Number, Exporter, Exporter Contact;
- BUYER INFORMATION: Buyer, Buyer Contact;
- SHIPMENT REFERENCES: Product Type, Loading Site, Country Of Destination, Place/City Of Destination, Name Of Vessel, Voyage Number, Estimated Date of Arrival in Liberia (ETA), Estimated Date of Departure from Liberia (ETD);
- PRICING INFORMATION: Total FOB Value, Commercial Invoice #;

- INSPECTION INFORMATION: Inspection Site Type, Inspection Place, Inspection Requested Date.

Details of available information, on/from the STATUS HISTORY tab:

- DATE;
- FROM STATUS (Draft, Data entry completed, Submitted, Waiting for inspection, Under review, (Rejected), Waiting for operator approval, Waiting for final approval);
- TO STATUS (same + Approved);
- PERFORMED BY;
- COMMENT;
- Document icon: View (Type [e.g. Export Permit], Reference [e.g. Export Permit #], Description, Document Uploaded [e.g. Export Permit pdf file**], Issued on).

** Copy of the Export Permit showing:

- Header: FORESTRY DEVELOPMENT AUTHORITY, Legality Verification Department, F001-04, 01.12.2018, Page 1 / 8;
- Export Permit #;
- Exporter: Name, TIN, Address, Contact Name, Contact Phone, Contact Email;
- Buyer: Name, Contact Name, Address, Contact Phone, Contact Email;
- Shipment Reference: Product Type, Loading site, Country of Destination, Place/City of Destination, Name of Vessel, Voyage Number, ETA in Liberia, ETD from Liberia, Number of Units, Total Volume (m3);
- Product Description: Volume (m3) by Product Type and Species, “More details available in attached SPEC#”;
- Pricing Information: Total FOB Value, Commercial Invoice #;
- SGS Approval, FDA Approval, QR Code.

How is the full export permit issuance process reflected in LiberTrace?

The verification process is (said to be) embedded in LT which (i) conducts logical traceability verification at each step of the supply-chain, (ii) records and reconciles physical inspections (in forest, log landings, log/timber export yards, loading into containers/ onto vessels) and (iii) records and checks fiscal and legal requirements before issuing EPs.

The IA was able to observe the following information in LT related to the EP issuance process, on or from relevant tabs.

Details of available information to the IA, on/from the LOG PRODUCTS tab:

- PRODUCT TAG, SPECIES, DIAM. BUTT, DIAM. TOP, LENGTH (M), VOL. (M3);
- T (TRACEABILITY DETAILS: [PRODUCT #]);
- L (LEGALITY DETAILS OF PRODUCT #: … ON [Date, Time]);
- F (FISCALITY DETAILS OF PRODUCT #: ON [Date, Time]);
- STATUS (e.g. Approved);
- Document icon: Approval Status History, for each step:
  - DATE, FROM STATUS, TO STATUS, PERFORMED BY, COMMENT.

Details of available information to the IA, on/from the INSPECTIONS tab:

- INSPECTION #, INSPECTION DATE, RESULT, STATUS, STATUS DATE;

- Document icon: Inspection Results, for each Inspection #:
  - DETAILS OF INSPECTION: [Inspection #],
  - RESULT: Done Date From, Done Date To, Inspection Result [e.g. Not Satisfactory], Lead Inspector, Inspection Detailed Result, Inspection Report,
  - INSPECTED LOGS: LOG PRODUCT TAG, SPECIES, DIAM. BUTT, DIAM. TOP, LENGTH (M.), VOL. (M3), Document icon: (e.g. DECLARED / FOUND COMPARISON, with Declared vs. Found: Species, Average Diameter Butt End, Average Diameter Top End, Length, Volume).

Details of available information to the IA, on/from the DOCUMENTS tab:

- IN/OUT; TYPE [e.g. Export Permit]; REFERENCE; FILE NAME; ISSUED ON; CREATED BY.

Conclusions 2 (from A1R 6.3, to be reassessed for continued relevance):

The list, details, status history, copies and shipping list of all EPs in different categories can indeed be found in LT since the oldest record (EP issued on 28/06/2017). This covers the final EP approval process, which includes the physical inspection of products.

As to whether the full EP issuance process is reflected in LT, the verification process embedded in LT aims to (i) conduct traceability checks at each step of the supply-chain, (ii) record and reconcile all physical inspections (forest, log landing, export logyard, loading) and (iii) record and check fiscal and legal requirements before issuing EPs.

Notes for future attention:

- A “history” report is also (said to be) available for each item exported *reporting all anomalies detected under the VPA requirements*. Further evidence of this (in the above-mentioned STATUS HISTORY, under the LOG PRODUCTS tab and/or elsewhere): needs checking in LT;
- The LOG PRODUCTS tab (for logs) contains details that are relevant to the approval process (see 5.3.2). No DOCUMENT View or Download function? The INSPECTIONS tab contains details of the EP inspection (see 5.3.2). Access to the Inspection Report? The DOCUMENTS tab contains details of documents created and issued including EP (see 5.3.2). Access to the actual Document? IA auditors have since then been given access to these documents.

Procedures for going through all the EP approval steps (as per the STATUS HISTORY tab)?

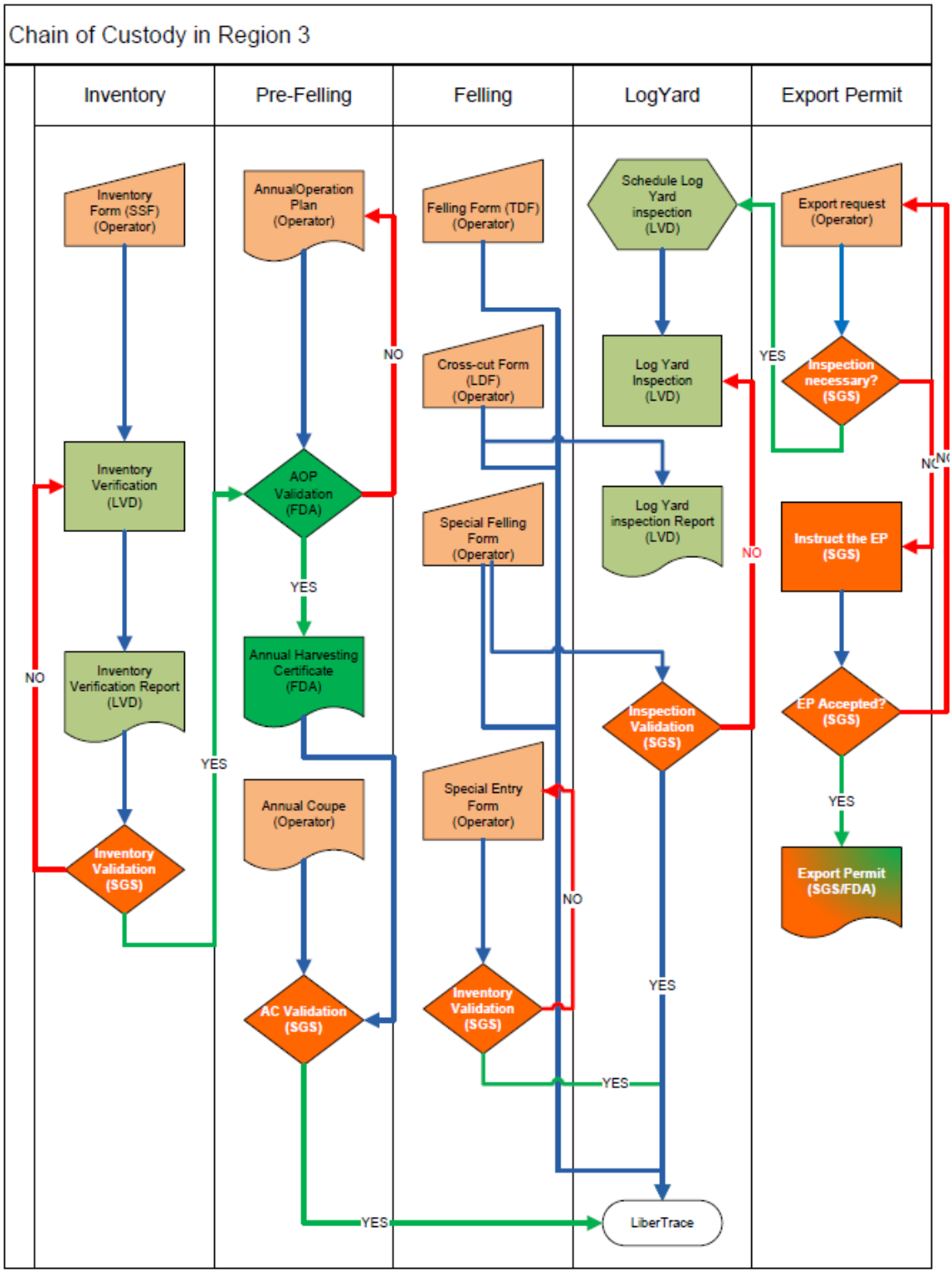
Worthy of note as this stage are the three pillars for EP approval that can be seen in the LOG PRODUCTS tab at the individual product level:

- T (for TRACEABILITY); L (for LEGALITY); and F (for FISCALITY).

After acknowledging that the verification process embedded in LT covers a large number of verification checks, the IA needed to be guided towards further evidence (not clearly found yet in those “history” reports) how EPs are issued.

Meanwhile the IA was provided with a workflow diagram (See next page) that shows the following steps:

Supply chain stages:	***Inventory***	***Pre-felling***	***Felling***	***Logyard***	***Export permit***
COCS management activities:	Inventory form verified by LVD, validated by SGS	Annual Operation Plan (AOP) validated by FDA, Annual Harvesting Certificate (AHC) issued by FDA, Annual Coupe validated by SGS	Data from Felling form, Cross-cut form and Special felling form (if Inventory validated by SGS) submitted by Operator, uploaded in Libertrace	LVD Logyard inspection report, validated by SGS	Export permit request triggers Logyard inspection, if found necessary by SGS; or SGS instructs EPR and SGS/ FDA approve and issue Export permit

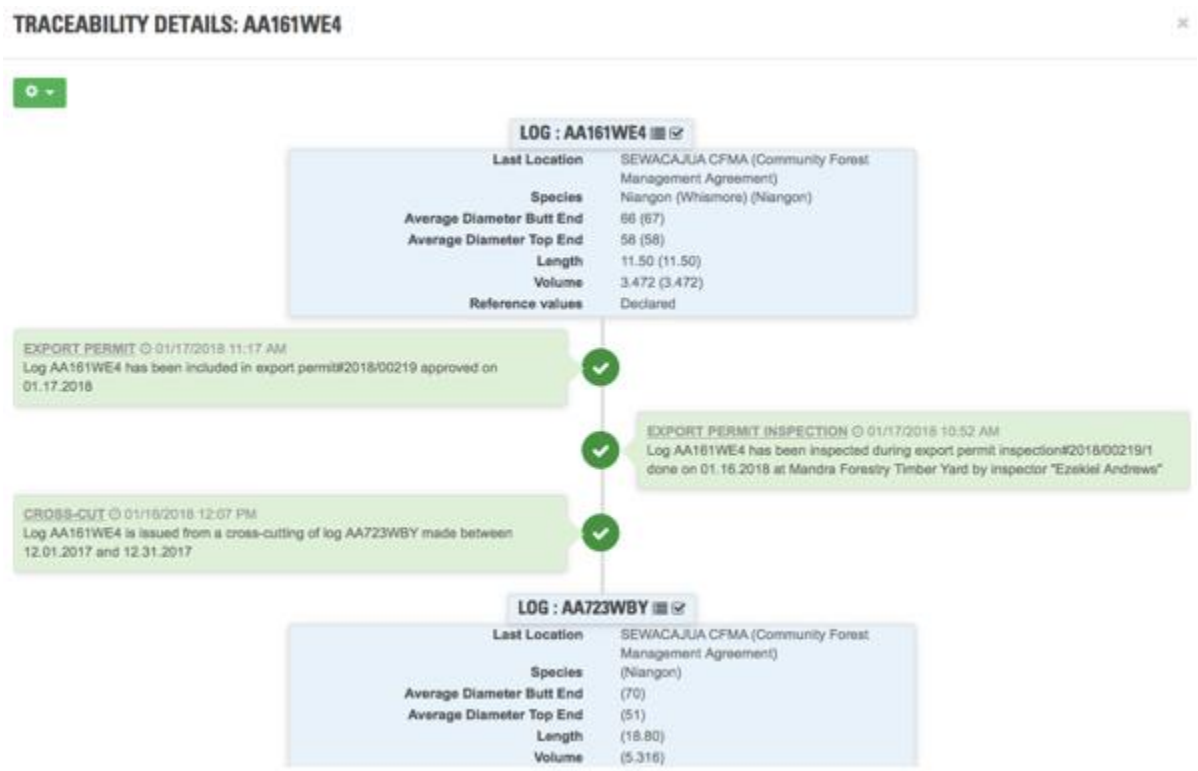


7.5.2.2 Traceability

Regarding '**TRACEABILITY**' the IA continued observing the following information in LiberTrace (LT).

The TRACEABILITY DETAILS in the LOG PRODUCTS tab, for a particular log that has certain attributes (Log number e.g. AA161WE4; Last Location; Species; Average Diameter Butt End; Average Diameter Top End; Length; Volume;

Reference values (e.g. Declared)) describe the “traceability” of the product through the (last and previous) steps of EP issuance process as per the following diagram:



The active links in the diagram further provide the following detailed information:

- **EXPORT PERMIT** 01/17/2018 11:17 AM:
  - Log AA161WE4 has been included in export permit #2018/00219 approved on 01.17.2018;
- EXPORT PERMIT INSPECTION 01/17/2018 10:52 AM:
  - Log AA161WE4 has been inspected during export permit inspection #2018/00219/1 done on 01.16.2018 at … by inspector "…";
- **CROSS-CUT** 01/16/2018 12:07 PM:
  - Log AA161WE4 is issued from a cross-cutting of log AA723WBY made between 12.01.2017 and 12.31.2017;
- **LOG: AA723WBY** [the “mother” log]:
  - Last Location; Species; Average Diameter Butt End; Average Diameter Top End; Length; Volume; Reference values (e.g. Declared).

From looking at other examples, the list of *steps in the process* up to EP issuance in LT actually shows *all, or part of* the following (backward) steps:

- EXPORT PERMIT;
- TIMBER YARD INSPECTION;
- EXPORT PERMIT INSPECTION;
- CROSS-CUT;

- FELLING;
- ANNUAL COUPE;
- TREE;
- INVENTORY INSPECTION;
- INVENTORY;
- RESOURCE AREA.

Why is the number of steps recorded in the TRACEABILITY DETAILS (above) variable, and which are compulsory and which are not?

Practically, the number of events is not set; a log could change status several times (cross cut or processed).

Why the "T" in the LOG PRODUCTS tab, however, can have 3 colors (red, orange or green) and what does it implies?

Along the CoC each event may trigger a warning or an error. An error implies a red T, a warning implies an amber T. A green T means a green light (no issue).

There is no orange for L. For F, when an invoice is issued the F is orange; after 30 days if the invoice is not paid the F turns red or, as soon as the invoice is marked as paid, the F becomes green.

What products are covered by a particular Export permit, on the basis of any official kind of 'Shipment list' associated with the permit, on which the products are listed and described?

A "SPEC" (for Specification) is attached to each EP and mentioned in the 'Product Description' section of the EP.

Detailed information available in a SPEC (example):

- Header: FORESTRY DEVELOPMENT AUTHORITY, Legality Verification Department, F001-04, 01.12.2018, Page 2 / 8;
- SPEC #;
- Number of Units, Total Volume (m3), Volume never short-shipped (m3), Volume previously short-shipped (m3);
- Sub-headers: Shipment type (eg. Round Wood), Species, Nb Logs, Total Volume;
- Sub-sub-headers: N°, Tag Number, Species, Diam (cm), Length (m), Volume (m3).

Conclusion 4 (from A1R 6.3, to be reassessed for continued relevance): At first sight the 'TRACEABILITY' function does provide - where possible - effective traceability of the export product (including its filiation) through the steps of the EP issuance process, with active links to each step back to forest permit. It leads to three possible colors: red for an error, orange for a warning, and green light.

Notes for future attention:

- Since the above analysis was completed, the IA has been given extended access to LT functionality. The IA now has the view on the LOADING REQUEST, EXPORT PERMITS, INSPECTORS, LOADED LOG PRODUCTS tabs. The latter shows: EXPORT PERMIT, N°, LOG PRODUCT TAG, SPECIES, DIAM. BUTT, DIAM. TOP, LENGTH (M), VOL. (M3), STATUS, & COMMENT, however no loading report (as per the Loading Registration Form

in SOP 26?) seems accessible [From Audit 4: IA now has access to the loading report (See 6.2.3.8, A4R Vol.1)];

- Why also the graph in TRACEABILITY DETAILS under T in SALES, EXPORT PERMITS, LOG PRODUCTS stops at the EXPORT PERMIT step, not the loading, therefore not showing the loading and loading inspection steps and not allowing backward traceability from loading? Is this still the case?
  Follow-up during Audit 3:
  SGS/LVD: "*Look [the graph?] again, under the second time EXPORT PERMIT is used, small lines: …was successfully loaded on…; but this will not be informed until the B/L has been reconciled*".

Further IA action:

- The number of events recorded above appears to be variable, as a log could change status several times (cross-cut or processed). The IA needs to understand which "T" steps (events, critical control points (CCPs)) are compulsory and which are not, assumedly relating to applicable Legality Matrix requirements;
- As far as overall traceability is concerned, further investigations will be needed for the IA to identify the relevant legal requirements or system features for T/L/F (including from VPA Annex II, Appendix B, complementing the analysis of the COCS under 6.1.9.1) and;
- to better understand (and assess) whether full traceability is ensured, showing product filiation and all changes of product state, ID, location or ownership, as well as way bills or other documentation for such changes, and validated by physical inspections at critical stages, meeting the usual requirements of a national wood traceability system;
  Follow-up during Audit 3 (for further review of existing LT assessment reports, and/or further reviews and testing by the IA of LT's capacity to trace (i) product filiation, (ii) changes of product state, (iii) ID (same product re-numbered), (iv) location, or (v) ownership, as well as (vi) the validation by physical inspections at critical stages):
  - With regards to the last point above, the answer from SGS/LVD is essentially "Yes", including location (by waybills) and ownership (by change of ownership, mandatory by Seller and accepted by Buyer, all in LT).
  - There are a few problems managing different roles (Holder, Operator = Logging co., Trader …).
  - One reservation is the late declaration of felling, implying insufficient field checking and only retroactive reconstruction of the CoC (See Issue MII 14). The late linking of a log to a mother log after cross-cutting requires a manual verification of diameters, and total Length and Volume. The record is kept.
  - For future attention: There was a suggestion to test the latest Remote Sensing technology (free satellite images with EU Copernicus), like every 2 weeks to see where trees are gone (if technically possible) or changes on log landings.
- For 'LEGALITY' (L) and 'FISCALITY' (F), again, the legal requirements will need to be clearly identified and their transposition in LT and other elements of the LAS assessed.

Regarding "Tolerances in LiberTrace", an email exchange with SGS in December 2017 provided the following information:

These tolerances were discussed with FDA and are in place since several years (since LiberFor) but could be reviewed if FDA and the companies agree otherwise:

The measurement of the logs is out of tolerance if one of the 4 conditions below is met:

- Butt-end diameter value different from the declared one over +/- 15%
- Top-end diameter value different from the declared one over +/- 15%
- Length value different from the declared one over tolerance of +/- 20cm
- Calculated volume different from the declared one over tolerance of +/- 15%.

The IA Auditor has not received answer from SGS as to where in LT this is documented.

Consider moving this section out of 6.3.2 (EP Issuance) in future: to just LT, T?

For future action:

- Test the traceability section of LiberTrace further (it was not much tested as part of the Audits 1 to 3 due to time constraints); see however 6.2.3.8 and 6.2.3.9 (tests by the IA) in this report and Chap.6.3 on the 'Review of the current issuance of Export permits'), esp. 6.3.3.4 in A4R Vol.1 (tests by LVD).

7.5.2.3 Fiscality

On FISCALITY, Section 13.8 of the NFRL establishes that:

(a) No person shall export Forest Products without an export permit from the Authority [the FDA];

(b) The Authority, in collaboration with the ministries of Finance and Commerce, may issue export permits for Forest Product;

(c) *The Authority shall not issue an export permit without confirming that all taxes and fees relating to the Forest Products subject to the permit have been paid.*

The FISCALITY DETAILS OF PRODUCT # [#] ON [Date & Time] in the LOG PRODUCTS tab include the following information:

- INVOICE DATE;
- NUMBER;
- INVOICE TYPE (Area Fee, Chain of Custody Registration Fee, Annual Contract Administration Fee, Area Fee, Annual Coupe Inspection Fee, Stumpage Fee);
- AMOUNT;
- DUE DATE;
- STATUS (Cancelled (grey) / To be paid (Orange) / Paid (green) / red not paid after 30days).

Conclusions 5 (from A1R 6.3, to be reassessed for continued relevance):

The 'FISCALITY' function for a particular product contains the details of fee invoicing for all fees and payment status with the same "traffic light" tricolor system plus grey for 'Cancelled'.

Further IA action: Further investigations on fiscality (applicable, implemented, allowing projections?) is being done in conjunction with related reviews in 6.1.1.9, 6.2.3.2, 6.2.5 and others under P9 and of the related SOPs.

7.5.2.4 Legality

For LEGALITY, the review of LiberTrace (LT) shows the following LEGALITY DETAILS in the LOG PRODUCTS tab (as an example) and the same list of criteria is found in another Export Permit (EP):

LEGALITY DETAILS OF PRODUCT #: AA548TAT ON 01/11/2018 05:19 PM
(Note: the same list of criteria is found in another EP)

Global: LEGALITY VERIFICATION DEPARTMENT (LVD), PAYNESVILLE CITY (LIBERIA) 08/22/2016

1.2 Prohibited Persons

1.3 PPCA Violation

Product Owner: …

1.2 Prohibited Persons

8.1 Employment

8.2 Minimum Wage

8.3 Employees‘ Working Hours

8.4 Employment Minimum Age

8.5 Employer’s Contribution

8.6 Workers Health and Safety.

10.1 FDA Registration

11.2 LEITI Participation

Resource Area: …

2.1 Communities Consulted

2.3 Prequalification Certificate

2.4 Concession Bid Evaluation

2.6 Contract Area Map

2.7 Bidders Bond Receipt

2.8 Performance Bond

2.9 FMC Ratification

3.1 Social Agreement with Communities within 3.0 km

3.5 Social Agreement Fees Paid

4.1 Annual Operational Plan

4.2 Annual Operational Plan Compliance

5.1 Environmental Impact Assessment (EIA)

5.2 EIA Implementation

5.3 Environmental Compliance

6.1 Log Waybill

6.2 Log Marking Compliance

9.1 Taxes Paid

9.4 Annual Tax Return

11.1 Payment Publication

11.3 Concession Publication

Main finding: These criteria in the LEGALITY DETAILS have been found to refer to Indicators in the Legality matrix (VPA, Annex II, Appendix A.2) but to only represent a sub-set of all the Indicators in the Legality Matrix (LM). In a different place in LT ('LEGALITY' tab), *some, but not all*, of the Principles and Indicators of the LM are also found for a particular company. It is unclear to the IA why only some, and not all, of the Indicators of the LM are found in both places.

At that stage the IA had no access to any information beyond this list and could only see "red Ls" (or a "grey L" where it says that "There are no legal details for this product"). It was therefore unclear which criteria were verified, by whom, what the results of such verification were, and how these results were taken into account in the decision to issue the EP.

The IA has since then been advised that the entire LM is stored in LT (all Principles, Indicators and Verifiers) but shows up depending on the company, the contract and the type of product; and that only an audit can turn an Indicator to green.

However, it would appear that in practice some criteria of the LM (e.g. most of the Principle 5 Verifiers) are considered "not available" yet for legality verification in LT, and the VPA "not implemented yet", due to the fact that the JIC has not yet decided what should be implemented. As the IA was told, a new functionality is even being developed in LT that will allow SGS/LVD to exclude the Verifiers that are not available: because Legality is assessed at the Indicator level, if a Verifier of a particular Indicator is deemed not available the definition of the Indicator should be revised and the verification criteria be re-defined. Until then it is not considered relevant to check the "L" (hence only red or grey "Ls" can be seen). Yet, EPs are being issued…

Follow-up during Audit 3:

The IA needed to follow up on this potential issue, that until "the JIC has decided what Verifiers should be implemented it is not considered relevant to check the "L".

Whether this is at Indicator or Verifier level, SGS/LVD confirmed: Verifier.

Whether this applies to EP, SGS/LVD also confirmed: Yes. The IA is already aware that all Verifiers are not currently "active", including for EP issuance under "Current regime", not to mention for FLEGT Licensing?

SGS/LVD also commented: "*LVD checks, asks Company to make a few corrections, and then sends to FDA Management for decision*". For the IA, this confirms the discretionary decision-making power of FDA Management, possibly against an SGS/LVD recommendation (See ISSUE ref. HII 10 raised in 6.5.4).

Question for future attention (below): Where is the general functionality of LT documented? From the Audit 1 (A1R, 6.3): The IA started exploring LT functionality to reconstitute how the system has been designed. This preliminary analysis is yet to be complemented with a more detailed review and testing of system's functionalities initiated under Chap. 5.3, including for consistency with the CoC SOPs. It could be complemented in time with the review of relevant documentation (below).

Follow-up during Audit 3:

In order to complement the reconstitution of LT design/functionality:

1) Identify the documentation that preceded software development and describes the general functionality of LiberTrace (SGS' ToR, technical proposal, functional specifications, technical specifications, COCS SOPs partly, the new LiberTrace User's Guide?); and which have been / could be made available to the IA.

SGS/LVD: ToR for LVD: Yes, but available written specifications are vague;

- Technical offer, functional specifications, technical specifications: Yes;
- Annex I to tender for the LVS: Yes but "Tech specs" is only 3 pages;
- Annex II (Technical Specifications of the Chain of Custody (Traceability) System) to tender for the COCIS: Yes (13 pages) but Word docs, exact origin and status unknown (not reminding whether downloaded from FDA website? Initial tender?).

(For further assessment by the IA:) Suggesting that most development has been made in "Agile" mode (i.e. close, informal (verbal or by email), iterative interaction between the development team and the "client")?

Which of these specifications or manuals have been made available to the IA?

- 2006.11.15 Chain of Custody Management Contract RFP - Liberia.pdf
- Annex II (Technical Specifications of the Chain of Custody (Traceability) System): 2012.12.28 ToR Ann.2-Techn. Specs. on CoCS.docx
- 20180930_LR-LiberTrace_User_s_Guide-Forestry_Administration_V02.PDF.

2) Request existing assessments of LiberTrace; Could SGS make these available to the IA? If not, who? IA to ask through the official communication channel.

- D. Rothe's and H. Speechly's reports issued in 2018? SGS/LVD: There is confusion: Rothe and Speechly reports looked at the readiness (Outcome: FDA needs another year);
- SGS's own assessment ("LiberTrace fully operational" report) mentioned in 7.3.3.2 (report not available for download on FDA / SGS LiberTrace websites);
- The 'Evaluation of the LiberTrace software' in progress, also mentioned in 7.3.3.2 (report is due by February 2019 on the first, technical part of the assignment; the IA hopes to have access to the report).

"What general procedures and underlying regulations govern the *previous* steps in the *process* leading to Export permit issuance" had also been another *question for future attention*. The IA now assumes this is documented in both the "Current regime requirements for EP issuance" and the COCS SOPs plus the LT User's Guide (in detail).

Conclusions 6 (from A1R 6.3, reassessed for continued relevance):

The 'LEGALITY' function is still an area under review. It would appear that not all the relevant Indicators of the Legality matrix are represented and verified; hence

overall legality shows up in “red” for all products (or grey where “There are no legal details for this product”). Only an audit can turn an Indicator to green.

Some criteria may not be relevant, depending on the company, the contract and the type of product. But there is again the issue that some criteria of the LM are considered “not available” yet for legality verification in LT (See (5.3.2) and, until they are, it is not considered relevant to assess overall legality. Yet, EPs are being issued.

This relates to the situation that has been unveiled by the Baseline review (see 6.1.1.4 on VPA Art. 8,1a) and the field audit (SD 01 and CFHP checklist requirements not verified). In a first instance, the requirements in the LM being a transposition of applicable laws, the IA saw no reason for criteria not being enforceable hence also available for LVD audits and in LT. And the IA saw no reason for issuing EPs while entire ‘LEGALITY’ sections are not being verified as meeting legal requirements.

However, whether it is right or wrong to consider the VPA/LAS as “not implemented yet” until it becomes operational, clearly the VPA/LAS needs to be implemented and evaluated *before* it can become operational (See the VPA Art. 13 mentioned under 7.3.13 [where the same issue is actually being discussed] and also the Ann. VI providing criteria, about an independent technical evaluation of the L.A.S. before the FLEGT licensing scheme becomes operational).

And whether it is right or wrong to accept that some criteria of the LM may currently be “not available” (and in fact not enforced) for legality verification purposes in the COCS before EP issuance, this has been further analyzed and clarified under 7.3.12.2 where it has been found “acceptable to not cover full legality as per the VPA” for EP issuance [same discussion?]).

Recommendation: The IA is aware of a document titled ‘**Requirements for Export Permit under current Regime**’. Two different but apparently similar versions are posted on the FDA website in Forestry Laws & Regulations, Export Permits, Species List and Prices (www.fda.gov.lr/information/laws/#115-export-permits-species-list-and-prices). The FDA should remove the second redundant document (if it is confirmed that there is no difference between the two documents) from the FDA website.

The document says that the requirements “don’t cover all the verifiers … of the Legality Matrix…”. Such recognition links to the same issue already identified above that the Verifiers are “available” or not available” and, where not, Indicators are not fully evaluated. Further indications received include that many processes in FDA or other MACs are not in place.

The need to see with VPA SU (in relation to the fact that SGS has provided to VPA SU a list of Verifiers available and a prioritization of the implementation of the missing ones) had also been noted as something to follow-up on. This has been done under 7.3.1.3.

Further IA action previously noted:

- Better understand where the administrative workflow for the Legality verification process (as opposed to Traceability and Fiscality) is documented, for all Government bodies or agencies involved, based on the LM, the CoC SOPs and other, and how this is reflected in LT;

- Understand where all the requirements identified in the above-mentioned document are reflected in the COCS/LT and how it is monitored whether currently issued EPs have met all permit issuing requirements (using any existing checklist);

Follow-up during Audit 3 (for further assessment by the IA):

SGS/LVD only confirmed that all the 'Current Regime' requirements are reflected in the COCS/LT. However this does not tell where.

How it is monitored whether currently issued EPs have met all permit issuing requirements (using any existing checklist): That's the checklist the IA reviewed and assessed under Audit 2 (6.4.3.4, 'New evidence and findings, Export permit issuance and LVD reviews using the current regime'; **Annex 8.14**, 'Checklist for the issuance of export permit: Bluyeama and Sawakajua').

Where can this be found in LT?

- The IA intends to collect further information (about where in the COCS SOPs and in LT the 'Current Regime' requirements can be found reflected) in order to be able to fill in the added columns (Document; Reference in LiberTrace; Delivered by; LM Verifier; Reference in the Law) in the tables derived from the above-mentioned document (See below in this chapter).
- In particular, the IA will also wish to understand: how and where in LT it is monitored and *recorded* whether currently issued EPs have met all permit issuing requirements (consistent with LVD checklist?)

Latest issue of the 'FLEGT VPA Update' published by FERN: June 2019 (extract):

- The Forestry Development Authority (FDA) has promised nevertheless to respond to CSOs' briefings. For example, during the May NMSMC meeting, the FDA stated that they would respond to Sustainable Development Initiative's (SDI) brief on Sewakajua CFMA, published in March 2018. The FDA is currently verifying the findings of a December 2018 report by VOSIEDA, another CSO, highlighting compliance issues. Such FDA actions, though delayed, appear to demonstrate commitment to addressing CSOs' concerns regarding rule of law, due diligence and, more broadly, compliance in the forest sector. However, the FDA must be more proactive in dealing with issues that strengthen transparency and accountability within the forest sector, especially concerning community forestry processes.

Apart from the fiscal (tax payment) and traceability requirements identified above, are there any provisions in the legislation regarding what other legal (legality) requirements should be met for an EP to be issued?

In that regard, the IA is only aware of the document titled '**Requirements for Export Permit under current regime**' (See 5.4[117]). The document aims to identify all the requirements that need to be met by a concession holder in order to be granted permission for logging activities in Liberia and for export. It appears on the FDA website and is accepted by all parties as the requirements related to the

[117] Posted on the FDA website in Forestry Laws & Regulations, Export Permits, Species List and Prices (http://www.fda.gov.lr/information/laws/#115-export-permits-species-list-and-prices): 'Requirements-for-Export-Permit-under-current-Regime.pdf' of Nov. 2016 (Verification of documentation before issuance of Export Permit)

issuance of an EP. It has also said to have been shared with the EU, when the EU (in their capacity as the other VPA partner) asked for the requirements to be met for the issuance of an EP.

According to the IA's Legal expert, the document is not enforceable *per se*, as it is merely a summary of applicable laws required to be complied with before issuance of Export Permit, as also compiled in the VPA Legality Matrix.

These legal requirements are embedded in laws and regulations (i.e. NFRL 2006, the Ten Core Regulations and the Code of Forest Harvesting Practices, and the Standard Operating procedures developed for implementation of the COCS), which are the documents that set out the *enforceable* requirements. These requirements include complying with:

- Prequalification procedures;
- Concession allocation through competitive bidding process;
- Pre-felling requirements;
- Felling requirements; and
- Post-felling requirements.

All the requirements above are compliant with Section 13.5 (a, e) in the NFRL, which, it is recalled', states:

"To facilitate verification of applicable taxes and fees and legal origin of Timber *prior to the issuance by the Authority of any export permit, the Authority shall establish and maintain a Chain of Custody System for all Timber*" and "… *no Person shall import, transport, process, or export Timber unless the Timber is accurately enrolled in the Chain of Custody System*".

As previously noted, for further attention, Section 13.5 of the NFRL also provides for the following:

b. To the extent practicable, the Chain of Custody System shall be consistent with internationally recognized standards.
It is not clear, however, to which "internationally recognized standards" this refers. Similar national Chain of Custody Systems (a.k.a. National Wood Tracking, or Traceability Systems) have been designed and are being implemented in several countries and this *de facto* constitutes internationally recognized standards for designing such systems. The Chain of Custody standards used in forest certification schemes like the FSC follow a very different approach, being voluntary and company-based and not providing real, individual product-based traceability.

c. The Authority may delegate management of the Chain of Custody System to a qualified contractor, subject to oversight by the Authority.
This is what has been done since 2007 in Liberia, with the initial COCS Management contract awarded to SGS.

d. The Authority shall, by Regulation, provide for the operation of the Chain of Custody System, and the Regulation shall declare the beginning date of operation for the System.
Enforcement of the COC SOPs for Operators is likely to have produced the desired result. Future IA action: To inquire whether declaration of the beginning date of operation for the Chain of Custody System as per Section 13.5d of the NFRL was done by means of a decree or approving the SOPs or else.

f. The Authority shall, by Regulation, identify internationally accepted standards for certification of Timber that all Holders must satisfy.
Note: See 6.1.7.6 where this point is covered.

According to the above-mentioned "Current regime" document (01 to 03), the requirements for all concession holders to start [logging and] exportation include the ones contained in the below table.

Suggested future action: Continue filling-in the table, possibly as part of the 'comparative analysis of requirements' table, with the suggested headings. Figure out: is this only about Legality, or also T/F.

TBC = To be Continued or Confirmed (i.e. this is "work in progress")

Table 16: Analysis of the 'Requirements for Export Permit under current regime' 01-03

Document	*Ref. in LiberTrace*	*Delivered by*	*Legality matrix Verifier*	*Reference in the Law*
1. **Prequalification procedures** – requirements to be followed by applicant requesting the allotment of forest concession in line with Public Procurement and Concession Act (PPCA) requirements; a. **Pre-qualification certificate**	TBC*	TBC*	2.3.2	PPCA
2. **Concession allocation (FMC)** – Competitive bidding process determines the awarding of contracts which includes: a) **Forest management contract**	TBC*	TBC*	2.5.2; 2.9.1 & 2.9.2	TBC*
b) **Socio-economic survey**	TBC*	TBC*	2.1.1	TBC*
c) **Forest inventory and environmental survey**	TBC*	TBC*	4.1.1 & 4.1.3	TBC*
3. **Pre-felling requirements** a) **Boundary line demarcation**	TBC*	TBC*		TBC*
b) **Social agreement**	TBC*	TBC*	3.2.1	TBC*
c) **Environmental and social impact assessment**	TBC*	TBC*	5.1.1	TBC*
d) **Performance bond**	TBC*	TBC*	2.8.1	TBC*
e) **Strategic forest management plan (SFMP)**	TBC*	TBC*	4.1.3	TBC*
f) **Five years forest management plan (5YFMP)** **Note from IA:** This is the compartment plan	TBC*	TBC*	4.2.2	TBC*
g) **Annual operation plan (AOP)**	TBC*	TBC*	4.1.2	TBC*
h) **Annual coupe demarcation**	TBC*	TBC*	4.1.2	TBC*
i) **Tax clearance; and payment**	TBC*	TBC*	9.1.1 &	TBC*

Document	Ref. in LiberTrace	Delivered by	Legality matrix Verifier	Reference in the Law
of Area fee and Annual Administration Fee			9.1.2	

* To be continued

According to the document (04 to 05), the requirements for issuance of each export permit (per shipment) include those in the below table:

Table 17: Analysis of the 'Requirements for Export Permit under current regime' 04-05

Document	Ref. in LiberTrace	Delivered by	Legality matrix Verifier	Reference in the Law
4. **Felling requirements** a) **Tax clearance; barcode issuance fee, block inspection fee**	TBC*	TBC*	9.1.1 & 9.1.2	TBC*
b) **Annual harvesting certificate**	TBC*	TBC*	4.1.1	TBC*
c) **Barcode Issuance**: After allotment of respective concession to Operator, the operator applies for barcodes to apply on trees (tree barcodes) and logs (log barcodes) to be enumerated, felled, converted to logs and subsequently exported. The barcodes issued are operator specific and cannot be used by other operators in the field. The same barcodes are verified throughout the life cycle of forestry operations in Liberia.	TBC*	TBC*	TBC*	Manual of Procedures for LVD staffs
d) **Verification of SSF/TDF:** The SSF (Stock Survey Forms) are used to submit enumerated tree data (more than 50 cm diameter at DBH) with the help of Tree barcodes. The enumerated trees are then submitted (not less than 60 cm and/or as per minimum cutting diameter specified for individual species) for felling approval. Once approved the trees can be harvested and are submitted in the form of TDF (Tree Data Form) for stumpage invoicing. **Note from IA:** The various minimum cutting diameters are again emphasised in this paragraph. This supports the IA interpretation that there is a variable cutting diameter depending on species, but that no species shall be less than 60 cm.	TBC*	TBC*	TBC*	Manual of Procedures for LVD staffs
5. **Post-felling requirements** a) **Stump verification**: Inspection to be conducted for	TBC*	TBC*	TBC*	Manual of Procedures for LVD

Document	Ref. in LiberTrace	Delivered by	Legality matrix Verifier	Reference in the Law
stumps where the trees have been harvested				staffs
b) **LDF**: Trees are then cut into logs and log tags (log barcodes) are applied. The data is recorded with the help of LDF (Log Data Form). Logs are then prepared to be transported to log yards from Forests sites with the help of Waybills.	TBC*	TBC*	TBC*	Manual of Procedures for LVD staffs
c) **Transportation and Waybill checks**: Waybills are issued to concession holders having unique barcode for identification and are checked in the forest concessions while loading, at check points during transportation and also at log yard while unloading by FDA and SGS.	TBC*	TBC*	TBC*	Manual of Procedures for LVD staffs
d) **EPR/LDF submission**: Upon successful inspection of the logs, the same could be submitted for issuance of SPECs, Export Permits and Certificate of Origin. Relevant certification could be issued subjected to verification of LDF against TDF & SSF.	TBC*	TBC*	TBC*	Manual of Procedures for LVD staffs
e) **Log yard verification** – LDF verification is done in the log yard before exportation	TBC*	TBC*	TBC*	Manual of Procedures for LVD staffs
f) **Shipment specification** – SPECs issued to operator clearly indicating compliant exportable logs	TBC*	TBC*	TBC*	Manual of Procedures for LVD staffs
g) **Shipment verification**: Verification of logs at the export port at the time of export	TBC*	TBC*	TBC*	Manual of Procedures for LVD staffs
h) **Certificate of origin**: issued subject to receipt of draft/ original Bill of Lading (B/L) and Short Shipped inspection report from the Port	TBC*	TBC*	TBC*	Manual of Procedures for LVD staffs
i) **Verification of Taxes/ Fee Paid**: Verification of fee/ taxes paid such as stumpage, export invoice, way bills etc.	TBC*	TBC*	TBC*	Manual of Procedures for LVD staffs

* To be continued

The “Current regime” document further says that the above requirements are part of the VPA Legality Matrix, but “don’t cover all the verifiers” and that in future “this will … include … compliance with all the principles, indicators and verifiers … of the Legality Matrix…”.

The recognition that some requirements (Verifiers) from the LM are not covered links to the same issue already identified above that the Verifiers are "available or not" and, where not, Indicators are not fully evaluated.

Further indications received include that many processes in FDA or other MACs are not in place yet for EP, in particular processes derived from VPA Principles 1, 2, 3, 5, 8, 9, 11, fines, and "still missing" or "not yet implemented" regulations. As per its Service Agreement, SGS/LVD recalls it is in charge of the CoC (P 4, 6, 7, 10) and of fiscality, while legality checks rely on LVD/FDA (See 6.1.1.9 for details on such division of tasks).

Important note: The above tables are a partial realization of the recommendation in 7.3.7 to compare the "Current regime" requirements for export permit, the EUTR requirements, and the VPA/LM requirements. These tables add the following information fields: "Ref. in LiberTrace", "Delivered by", and "Reference in the Law".

From 6.1.1.9 it can also be suggested to add references in the 'LVD COC SOPs' and in the 'Compliance Procedures to the VPA LM Verifiers' developed by VPASU.

From 6.4.4, there might also be a need to define minimum requirements for FLEGT licensing.

In the end, the complete comparison table could have the following columns:

- LM Verifier (description);
- Ref. in the LM (P/I/V);
- Inclusion (Yes/No)/Ref. in 'Current regime requirements for export permit';
- Inclusion (Yes/No)/Ref. in EUTR;
- Inclusion (Yes/No) as 'minimum requirement for FLEGT licensing';
- Ref. in LiberTrace (active verifier)
- Delivered by (responsible body) [This is optional as the information should be in the LM];
- Reference in the Law [Same];
- Useful ref. in LVD COC SOPs;
- Useful ref. in VPASU's document Compliance Procedures to the LM Verifiers;
- To the list of LM Verifiers, a list of timber products could be added as respectively subjected to the LAS as per the VPA Annex I and to the EUTR as per product list in the EUTR.

For future attention, from the following information collected during Audit 4, the IA's understanding is that new requirements are being added by the JIC for EP issuance, outside the LM:

'VPASec Updates' on the 7th JIC version of the Forward Planner (FP) (February 25, 2019), not yet taking account of eventual 7th JIC decisions:

Regarding extra-LM Principle of "**Regulations in place** for compliance with VPA LAS to issue FLEGT Licenses":
"Follow up on the JIC request for **companies to recruit foresters**".

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issues:

- Oct – Dec 2018 regarding above extra-LM Principle: "In accordance with the Technical JIC decision request, … AOP have been submitted. But the **requirement for companies to have foresters** have not been complied with".

What capacity has been created within the Government body or agency responsible for issuing EPs? What evidence exists of such capacity?

In relation to the issuance of export permits, the service provider SGS has been involved since 2008 and is currently building both COCS and Legality Verification capacities within the FDA through two related contracts (See also 6.1.4.2 and 6.2.1.1 regarding these two SGS's contracts) and their extensions:

- A Service Agreement with the Government of Liberia (FDA, LRA, MFDP…; reporting to FDA), the "SGS-COCS" contract (to develop and operate LiberTrace, based on SGS' in-house online solution LegalTrace), which started on 17/08/2016 (following the previous 2008 COCS management contract which had been tacitly renewed up to then) and has the same end date as the other DFID contract (October 2018);
- A contract with DFID, the "SGS-LVD" contract (to build LVD/FDA capacity, as a consequence from the VPA), spanning from October 2013 to October 2018.

The combination of both projects constitutes a BOT (Build-Operate-Transfer) Capacity Building process in phases as per the SGS Technical Proposal included in the Contract. The transfer to FDA LVD of both CoC and LV capacities is in progress. FDA LVD staffs seconded to SGS are undergoing training in the COCS with the aim that they will acquire the requisite knowledge to operate and manage the system without the involvement of third parties. Key outputs include the issuance of export permits. The SGS contract covers LVD CB of the (CoC and LV audit), not the direct implementation of the Legality matrix Verifiers that are not in the scope of the COCS.

For other aspects that may have been covered by the VPASU, and for risks of loopholes in the technical assistance to Liberia for LAS implementation, see 6.1.1.9.

Conclusion 8 (from A1R 6.3, to be reassessed for continued relevance): SGS has been involved since 2008 and is currently **building both COCS and legality verification capacities within the FDA LVD** through two related contracts within a combined BOT (Build-Operate-Transfer) process in phases. The transfer of capacity (a.k.a. Handover) to the LVD is in progress.

Suggested further IA action:

- Familiarize itself with SGS' mandates, up to October 2018 and further extensions, through contacting the contracting bodies for more information: copies of SGS' ToRs for the two contracts, technical proposals (if not included in the Contracts), and contracts (without the financial elements);
  This effort is being conducted above in this section for software development. As to building COCS and legality verification capacities within LVD, relative to EP/FLEGT License issuance, the IA has been provided a copy of the ToR (PO 6380 Contract Section 3 _LVD Establishing ToR.pdf) for SGS's 2013-2018 contract for further review; and the (DFID) contract is said to be available on the DFID website.
- Familiarize itself with SGS' transfer process, through the latest implementation plans and progress reports for both COCIS and Handover. CoC/Market and revenue reports should be available on the FDA website or the SGS Liberia ShareFile. The progress report and detailed Capacity Building implementation plan can be requested. See update in 6.2.3.1.

How is the capacity within the LLD being created (or until the LLD is created, the other FDA department currently responsible for issuing the Export Permits)?

The JIC still needs to set out how the LLD is going to work.

Note for future attention (from A1R 6.3, to be reassessed for continued relevance): Capacity within the LLD for approving EPRs and issuing EPs is not being built until the LLD is created. There is no evidence of any capacity building within the FDA Commercial Forestry Dept. that is currently responsible for the formal issuance of EPs. Is SGS/LVD currently covering EPR approval?

Further IA action under Audit 4: Follow-up on SGS's new contract after October 2018, through EU with DFID funding, said to include until July 2019:

- Basic training for a function that will prefigure the core of the future LLD and
- Monitoring until LLD capacity is built (6.2.3.2).

Consider moving this section out of 6.3.2 (EP Issuance) in future: to just LT, L at all, or only parts of it?

7.5.2.5 Background research into particular issues for follow-up under Audits 2-3

Main conclusion derived from A1R:

Timber Export permits (EPs) are currently being issued for logs and primary processed wood by two departments of the FDA: SGS/LVD for approval, and Commercial Forestry Dept. (in future, LLD) for final review and formal issuance.

The COCS managed by SGS/LVD (including COCIS management, CoC inspections and legality audits) is used to facilitate the verification of the three pillars for EP approval: TRACEABILITY, LEGALITY and FISCALITY.

Preliminary exploration by the IA to reconstitute the functionality of LiberTrace needs to be complemented with further review and testing. It has so far showed that the 'TRACEABILITY' function in LiberTrace ensures effective traceability of the export product, back to forest, and the 'FISCALITY' function that all fees are paid.

'LEGALITY' is likely to be the weak pillar, in a context where responsibilities for verification are divided between different bodies and not all legal requirements are currently taken into account for legality verification (as per 7.4.12 below).

The FMC that was audited during Audit 1 for compliance against the SD-01 and CFHP Audit Checklists (See 7.3.10, Operator's compliance etc.), which represents the LM requirements, is considered to be a representative sample for the whole Region 3 of FDA. It showed respectively 92% and 95% non-compliance to the high-risk requirements of these checklists. It also showed that log exports from Region 3 of FDA were in fact receiving EPs although they did not comply with even the list of key minimum official 'Requirements for Export Permit' in Liberia[118] that the FDA has provided the JIC with and, as such, were therefore being exported illegitimately under the cover of an official permit. Note: This finding, initially analyzed under what is now Chap. 7.3.8 (Operator's compliance etc.)[119] is now being discussed here, with the initial recommendation for consideration by the JIC that "Only logs for which Export permits can be legitimately issued, in line with all

[118] 'Requirements for Export Permit under current Regime' (www.fda.gov.lr/information/laws/#115-export-permits-species-list-and-prices)
[119] Which is now reduced to that current log exports would not allow FLEGT Licenses to be issued.

the requirements listed by the FDA in this regard, should be allowed (permitted) for export".

7.5.2.6 Follow-up

Dissertation:

To strictly apply the above measure (to only issue Export permits if all the "current regime requirements" have been met) would lead to a suspension of current exports. It is therefore likely to result in a *de facto* **closure of the entire Liberian logging sector**, which could have dramatic economic and other consequences. It is also unlikely that such suspension could be used by operators to efficiently prepare for full compliance, if and when ever allowed to resume operations, without operating. The measure could prove counter-productive and the closure would risk being definitive.

An alternative option might be to prepare and implement an "**Enforcement plan of 'Current regime requirements for Export Permit'**" aiming to improve forest governance "on the go", by acknowledging what works and what does not, and by striving to address all critical issues **within a set time frame** as part of **a transparent process**. The plan could be designed similarly to, and as part of, the Legality matrix revision and enforcement plan described in 7.4.12 (below) i.e.:

(i) **Identify the requirements that are not currently being verified and enforced** for Export permit issuance;
(ii) **Analyze the reasons** for such situation (requirements not currently verified for EP), and **inform the Legality matrix revision** process (7.3.7);
(iii) Where relevant and possible (subject to the related verification in 7.3.7) use **attestations of regulatory compliance** with administrative obligations **issued by the relevant bodies** in non-critical areas of the Law for forests and people, meaning operator is "under control" in that area, with the idea to replace a number of administrative requirements that would be covered by such attestation. In the context of EP issuance too, there might be a need for such complementary "evidences" of overall legality;
(iv) Where relevant, undertake law reforms or issue ministerial instructions to officially **remove, waive or suspend the application** of specific, irrelevant requirements;
(v) For those legal requirements that are not currently being verified and enforced for Export permit issuance, but should be so, publish and implement a remedial **law enforcement action plan**;
(vi) Clarify which non-conformances shall be **blocking for an Export permit** and which shall not, if not all; and
(vii) Establish a **monitoring and evaluation mechanism** for the whole process.

In case the current status quo is not regarded as an option for the JIC, then it is suggested **Liberia is faced with** a **clear political decision to make:**

- Continue issuing illegitimate Export permits; or
- Close down the entire Liberian logging sector, or
- Adopt a "'Current regime requirements for Export Permit' enforcement plan"

Follow-up (in consultation with the IA Legal expert):

Question: Apart from the fiscal (tax payment) and traceability requirements identified in the law (NFRL, 10 Core Regs), are there any other provisions in the

legislation regarding what other legal (legality) requirements should be met *for an Export Permit to be issued*?

Apparently none. It is the intention of the Law to only take into account fiscality and traceability for export (which is already more than for most other goods).

The NFRL was enacted in 2006 long before the VPA, and so its requirements did not mention VPA and could not have mentioned the full requirements of the VPA.

The NFRL 2006, however, expressly provides for (1) due award of forest resource licenses, including pre-qualification processes elaborated in the Ten core regulations; and for (2) pre-felling requirements that, in the case of FMCs, are detailed under NFRL 5.3(b-e); and fiscal terms as well as traceability. But this is not specifically for the purpose of issuing EP.

Question: Would it therefore be illegitimate to use the EP issuance process to check on legality as per the "Export permit requirements under current regime" document; or to deny an EP because of other (i.e. other than fiscality or traceability) legal problems?

These legal requirements have to be met anyway and it would not be acceptable to receive an EP for illegally produced timber. So it made common sense that, on the basis of the above-mentioned document, *the EP issuance process is now being used as a filter to check on legal compliance especially with regards to forest management regulations*.

The 'current requirements for issuance of Export Permits' *substantially cover legality but not fully*. And this is what the Export requirements document expressly says. The second sentence of the first paragraph of the document states as follows: "The requirements from 01 to 03 (as below) are required for all concession holders to start exportation; however, requirements from 04 to 05 are to be followed for issuance of each export permit per shipment continually during the life cycle of the contract". A fair reading of the above language is that the requirements contained under 01-03 (inclusive of award of forest resource licenses and pre-felling requirements) are applicable to and binding on all logging companies, but that for purposes of issuance of EP, *the checks will only be on fiscal and traceability*. This requirement is somehow reasonable because *before harvesting, most of the questions about award, pre-felling requirements would have been met*. For instance, Section 5.3 (e) of the NFRL states that no Annual harvesting certificate should be issued unless all the necessary plans have been approved, and these plans required executing a social agreement (SA) and completing an environmental impact assessment.

The full justification (to use the EP issuance process to also check on legality) may be that traceability (in the COCS) is implicitly to be defined as having to establish that the timber comes from a *legitimate* forest source (not whatever forest), which would imply compliance with key forest management legislation (on logging rights, pre-felling, harvest etc.).

Question: In the above context, would it be right for the FDA to decide (if it is found that this has been the case) that not all legal requirements applicable to logging and to timber production and export activities should be enforced for Export permits i.e. to only check a set of "minimum requirements"?

Based on how some of these requirements already cover the pre-felling requirements, *it seems reasonable that the check at the stage of issuing EP would*

be limited to some key requirements, it being understood that *this procedure is only applicable prior to full implementation of the LAS*.

In this regard, it is important to note the language of the last paragraph of the same Export permit document, which states as follows:

"The above requirements are part of the VPA Legality Matrix BUT DO NOT COVER ALL THE VERIFIERS. In future, the VPA Legality Assurance System (LAS) will ensure a credible mechanism for Chain of Custody and legal traceability of logs being exported from Liberia. The system will be able to answer all the questions raised by any third party with respect to checks being made in the forest sector pertaining to legal traceability. In other words, the VPA requirements will be fulfilled in full. This will also include the compliance with all the principles, indicators and verifiers as per the requirements of Legality Matrix of the VPA".

Based on the foregoing, *the current EP requirements are part of the VPA Legality Matrix, BUT DO NOT COVER ALL THE VERIFIERS*. A full check of legality, fiscal compliance, and traceability as well transparency, as detailed in the LAS, would be required to be fully implemented only when the LAS is being implemented, but *an implementation of only the NFRL does not mandate their full checks for EP issuance*.

First, *to require all such checks would mean to apply their checks not only for export, but also for the domestic market so as not to discriminate between markets (domestic markets vs. export markets)*[120].

Regarding using the EP requirements to check [overall] legality (as per the VPA), it would be improper because the very EP document/process expressly states that *it is not intended to cover all legality requirements*.

The EP process therefore says that the checks should only focus on the requirements listed under 04-05. *This is a policy decision taken, which (…) is practical ad interim*.

(…) *the FDA may be justified in its decision not to include all requirements (like Labor laws compliance, transparency regime, and other requirements) at the stage of exporting if the same requirements are not being enforced for all timber products put on both the domestic and export markets*.[121]

In conclusion, it is **logical to use EP to check on legality**, and it is also **acceptable to not cover full legality as per the VPA**.

Other relevant comments (IA team):

1. The "current regime" document may seem to have been designed to meet minimum legal requirements that reflected the EUTR legality requirements and to thus provide a relatively credible list of requirements from an international perspective.

[120] This is an interesting angle, although (i) in the preamble to the VPA the Parties "recognize" that "Liberia's LAS is designed (…) with a view to applying and/or extending the legality requirement *to all timber products used on the domestic market*", but (ii) Section 2.3 of Annex I of the VPA provides that "*…Checks on products sold on the domestic market will gradually be phased in* according to a schedule that depends on the implementation of the [new regulations], and which takes consideration of ECOWAS regional trade treaties and their integration into the LAS", and (iii) according to the IA ToR p.8 (Sequencing of Audits and operationalization of FLEGT licensing scheme) "…*Legality verification checks on products sold on the domestic market* are expected to be *phased-in within two years after the LAS has become operational for exported timber".* So there is no expectation that the domestic market will start to be checked as soon as the export markets are also starting to be checked.

[121] See previous footnote, however.

2. The EUTR (Article 4, Obligations of operators), however, is clear in that "1. The placing on the market of illegally harvested timber or timber products derived from such timber shall be prohibited", where 'illegally harvested' means (as per Article 2, Definitions (g) "harvested in contravention of the applicable legislation in the country of harvest"; and 'applicable legislation' means (h) "the **legislation in force** in the country of harvest covering the following matters:

- Rights to harvest timber within legally gazetted boundaries;
- Payments for harvest rights and timber including duties related to timber harvesting;
- Timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting;
- Third parties' legal rights concerning use and tenure that are affected by timber harvesting, and
- Trade and customs, in so far as the forest sector is concerned";

which is already more comprehensive than the EP requirements (if not quite at the level of the VPA, since EUTR does not include e.g. social requirements). However, EUTR does not identify particular or minimum legality requirements in those matters. So, the reference is really "the legislation in force" related to those matters in Liberia, not more, not less. Thus **the "current regime" requirements,** if they do not cover those matters fully, **are below EUTR legality requirements**.

Hence the need to actually identify the gaps in two steps (not only one step as in 7.3.10.3):

1) From the "Current regime" requirements for export permit to EUTR requirements (currently applying to exports to the EU); and then
2) Further, from EUTR to VPA/LM requirements.

This will require a detailed comparison of the respective requirements (VPA/LM > EUTR > "Current regime" for export permit). This is partly done (cross-referencing of Current regime requirements in LM) in the draft table titled 'Analysis of the 'Requirements for Export Permit under current regime' (See 7.5.2.4 on Legality).

3. No logs should reach [and leave] the port (with an EP) that do not meet the *minimum legislation that has been put forward by the FDA* (apparently also in a letter to DFID) *to confirm that logs reaching the port in fact meet these requirements*.

4. …technically speaking, you cannot issue an export permit for a log that should not have reached the port in the first place.

5. In the above context, the "current regime" checklist is thus a legitimate document prepared by FDA (though the LVD) to issue an export permit.

6. It is understood that legal export requirements applying to timber are not the same as (and probably exceed) those for common goods, because of the particular risks for the forests, and for all associated "goods and services" to the people, from bad management of these forests.

Regarding the actual "performance-based assessment" (7.5.3.1, below) of "Export permit issuance and LVD reviews using the current regime", see the analysis therein, which is based on the checklist developed by the IA to include all the requirements listed in the same "Current regime" document. This also covers a "system-based assessment" of the checklist used by LVD itself.

7.5.3 Performance-based assessment of Export permit issuance

7.5.3.1 New evidence and findings, Export permit issuance and LVD reviews using the 'Current regime'

Origin: 6.3.3 in this A4R Vol.2. As mentioned in the Audit 1 report, the IA intended to test a sample of Export permits (EPs) issued against relevant requirements during the next audits.

This review was done as part of Audit 2 as to how credible the system is for the issuance of Export permits (EPs) in Liberia by testing LVD's use of the relevant checklist for the examination of the EP requests of two operators (in CFMAs).

LVD developed a checklist, based on what was deemed to be of importance for making recommendations to FDA regarding the issuance of EPs to operators. The checklist was derived from the already mentioned document titled 'Requirements for Export Permit under current regime' (first introduced in 5.4). The LVD checklist is a selection of corresponding Verifiers for the 'current regime" from the Legality matrix.

As part of this analysis by the IA, and because the LVD checklist was found to be incomplete, the IA also developed its own checklist meant to include all the requirements listed in the same "Current regime" document. The checklist is contained in **Annex 8.14** (Checklist for the issuance of export permit) to this report, from which the tables 'Analysis of the 'Requirements for Export Permit under current regime'' in 7.5.2.4 derive.

The IA then sampled two Export permit requests of two operators (both CFMAs)[122] in a comparative analysis, the results of which is also contained in the Annex **8.14**. The results are summarized in the table below:

Table 18: Results from testing two Export permit requests for assessing LVD review

	Compliant	*Non-Compliant*	*Not checked*	*Total (two operators)*
Independent auditor	9	17		26
LVD	8	2	16	26
IA and LVD agree	4	1		5
IA and LVD disagree	4	1	16	21

From the above table, the following findings are derived:

- More than 60% (16 out of 26) of the required compliance criteria appearing in the "Current regime" document were not checked by LVD (because they are not represented in the checklist, which is therefore incomplete);
- In the check done by the IA, the compliance level was around 35% only, compared to 80% by LVD;
- Two EPs were issued by the FDA although for the IA the operators were not compliant with about two thirds of the total requirements;

[122] Names are held confidential in this report (but not in the annex)

- Five out of ten criteria were in fact interpreted differently by the IA as compared to the findings of LVD (because of improper use of the checklist). This is a 50% variance in the findings, illustrating that credibility of the current system of issuance of EPs is questionable.

Conclusions, from the above evidence:

- In both instances, LVD review of Export permit issuance using the current regime requirements was both incomplete and incorrect;
- EPs were therefore issued illegitimately by the FDA, with none of the two operators complying with the requirements listed in the "Current regime".

The above data is further backed by two additional pieces of evidence, an FDA study and an SGS letter to FDA, confirming concerns about the credibility of the current issuance of EPs:

- An undated memo titled "Review of 2017/18 Annual Operation Plans (AOP)" was obtained during the audit (see **Annex 8.15** to this report). The memo contains a review of the AOPs of 6 operators in Liberia for the 2017/18 logging season. The committee who conducted the review included senior persons from both FDA and VPASU. The committee found that not one of the 6 reviewed AOPs were fully compliant with the applicable legal requirements – again emphasizing that EPs should not have been issued to any one of these operators.
- A letter titled 'Legality of the logging companies against "Current regime' was issued by the Forestry Project Manager of SGS Liberia to the Managing Director (MD) of the FDA on 29 March 2018 (see **Annex 8.16** to this report, 'Legality of logging companies against Current Regime'), informing that none of the logging companies currently operating in Liberia are compliant with the requirements contained in the "Current regime" and requesting guidance from the MD. At the time of this 2nd IA audit, no response had been given by the MD regarding this matter.

Conclusions: From the above evidence, the FDA in Liberia is issuing Export permits despite evidence that potentially none of the operators is complying with the requirements listed in the "Current regime", which suggests discretionary decisions made by the FDA, to issue EPs in contravention of the requirements it has itself prescribed, and the absence of independent power to oppose these acts.

These conclusions are used here as relevant contributions to the follow-up of that broader issue.

Main conclusions (updated)

Export permits are currently being issued on the basis of a subset of key minimum legal requirements, not broad legal compliance to the level of the Legality matrix. Firstly, this must be recognized and made publicly known so as to avoid excessive legality claims in the context of international timber regulations (such as the EUTR) and associated due diligence/ due care (or SFM/legality certification, if it existed in Liberia).

It is logical to use EP to check on legality, and it is also acceptable to not cover full legality as per the VPA. It remains that all "current regime" requirements must be met as the current set of minimum requirements for "legal exports" from Liberia, though not quite meeting EUTR requirements yet, and as an interim measure prior to full implementation of the LAS.

But current log exports are receiving Export permits (EPs) without complying with the list of official "current regime" requirements listed by the FDA. This suggests discretionary decisions made by the FDA, to issue EPs in contravention of the requirements it has itself prescribed.

The assessed LVD reviews using the "current regime" requirements for Export permit issuance actually appeared to be both incomplete and incorrect.

On the other hand, to strictly enforce the "current regime requirements" is likely to result in the suspension of all current exports and in a *de facto* closure of the entire Liberian forest sector. The measure could have dramatic economic consequences; what's more, it could prove counter-productive, and the closure would risk being definitive.

An alternative option may be to prepare and implement an 'Enforcement plan of "current regime" requirements for Export permit issuance' aiming to address all critical issues within a set time frame as part of a transparent process. In case the current status quo is not regarded as an option by the JIC, then it is suggested that Liberia is faced with the need to make a clear political decision whether to:

- Continue issuing illegitimate Export permits; or
- Close down the entire Liberian logging sector, or
- Adopt the recommended "'Current regime requirements for Export Permit' enforcement plan".

Main recommendation (updated):

In order to avoid that abusive legality claims are made in the context of international timber regulations or certification, the limitation must be recognized and made publicly known that EPs are currently not issued based on broad legal compliance.

Urgently develop and adopt a 'Current regime requirements for Export Permit' enforcement plan so that no more EPs are issued for not compliant logs within a set timeframe.

Note: this links to the Legality matrix enforcement plan considered in 6.4.13 and would constitute an intermediary step in a stepwise process. The IA shall in future figure out how the Forward Planner addresses a similar process.

A **RISK** has been recorded (ref. **HR 2**) in the IA Progress Database:

RISK HR 2
Impact level: High
Identified RISK factor: EPs currently not issued based on broad legal compliance
Identified RISK description: Abusive legality claims in context of (EUTR and other) international timber regulations or certification
Recommendation(s): Limitation must be recognized and made publicly known.

The IA also raised a new **ISSUE** (Ref. **HII 18**) in the IA Progress DB, from splitting the old issue HII 4 as explained in 7.3.8.3:

ISSUE HII 18
Impact level: High

Identified ISSUE: Current log exports are receiving illegitimate export permits without complying with the list of official requirements
Recommendation: Adopt a time-bound 'Current regime requirements for Export Permit' enforcement plan, or close down the entire Liberian logging sector.

7.5.3.2 A case of FDA approval of Export permit against SGS/LVD recommendation

Origin: 6.5.4.

The IA was provided with the following evidence regarding one particular case reviewed during Audit 2:

- Copy of SGS Report 'Post-felling inspection TSC XX[123]' reportedly dated 16.02.2018. The Conclusions raise the lack of traceability of the logs and the logging operator's failure to declare the felling on time. The Recommendations include that (i) 27 logs should be rejected for export and (ii) the annual harvesting certificate (AHC) suspended until an FDA CFD audit is carried out and confirms the AHC and also determines the number of trees felled in the concession and not yet declared for stumpage fee reconstitution;
- Copy of letter dated 02.03.2018 from the MD of the FDA to the SGS Forestry Project Manager granting permission for the export of the logs, following verification of the validity of claims forwarded by the contract holder against communities and illegal loggers;
- Copy of email correspondence, containing the above letter attached, forwarded by SGS to VPA implementing institutions and to the IA, advising that SGS will continue blocking the export;
- Copy of letter dated 19.03.2018 from the MD of the FDA to the SGS Forestry Project Manager requesting SGS to allow through special entry the indicated volume of logs to be processed for shipment, with stumpage fee invoices enclosed, supposedly related to the above-mentioned documents;
- Copy of CROSS-CUTTING FORM # 2018/000474 showing the LIST OF CROSS-CUT LOGS' to be exported, also supposed to relate to the above-mentioned documents.

Subject to a deeper investigation of the case by the IA or comments from FDA, this has been presented to the IA as a case of FDA approval of EP against SGS/LVD recommendation.

The IA therefore raised an **ISSUE** (ref. **HII 10**) about this during Audit 2 in the IA Progress DB, now updated and completed:

ISSUE HII 10 (updated)
Impact level: High
Identified ISSUE: FDA approval of EP against SGS/LVD evidence and recommendation
Recommendation: Ensure no export permits are granted against LVD evidence and recommendations.

[123] Name of company kept confidential by in this report, although possibly not in annexes

7.5.3.3 Export permit sample testing

On the basis of the checklist it developed, the IA will be able to test further samples of EPs issued against relevant requirements during the next audits. See below.

7.5.3.4 Re-assessment and further assessment of EP Issuance during Audit 3

In relation to the Audit 3 Review of government roles, LVD:

LM Clauses	Issuance of export permits (EPs)
Other clauses	N/A
Procedures	CoC procedures
Design of Templates	EP templates exist
Comments and recommendations	No register being kept in a single place by FDA of all EPs that have been issued. <u>Export permits issued outside LiberTrace</u> EPs are being issued by FDA without any consultation with either SGS or the LVD. There have been stakeholder complaints that EPs have been issued illegitimately by the FDA. For example, for cam wood. Also, plantation logs are currently being exported outside the Traceability system (COCIS/LT). <u>Export Permits inside LiberTrace</u> Examples of instructions to SGS to issue EPs for logs not signed off in LiberTrace (LT) as being legal are continuing. This issue was raised during the second field audit (Issue HII 10), but one other example has been reported to the IA during this audit (from a confidential stakeholder source): See details below* related to the issuance of a questionable EP to one of the operators in Liberia. Also, no response has been received by SGS to the letter written to the FDA Managing Director (see details in the Audit 1 report) relating the fact that all log exports from Liberia are in fact illegal. The overall conclusions are: ▪ All log exports from Liberia still do not meet the requirements stipulated in the “current regime” and therefore remain illegal (Issue HII 10, HII 18). ▪ There are no systems in place and thus very little (if any) control on who, how, when EPs are issued, leading to potential for corruption. ▪ There is no evidence of a register being kept of all EPs issued and there is evidence that a parallel system to LT is being managed by the CFD of the FDA. **Recommendations:** It remains imperative that no EPs are issued for any logs in Liberia that do not meet the requirements of the “current regime”. The parallel system of EP issuance is extremely high risk, with high potential for the issuance of illegitimate permits in a fraudulent manner, and should be stopped with immediate effect.

Relevance in LM	Indirectly relevant

* The IA holds the records of the following as 'Audit 3, Annexure 1_Export Permit':

- 'Certificate of the country of origin' and 'Clearance letter for the Actual Export Permit' NTFPs no. AL02/2018 issued August 21, 2018 granted to Renaissance Group Inc. for 251.366 m3 of "chewing sticks" in the form of 44 Ekki / Lophira Alata logs to be exported as Abandoned logs within the context of avoiding the waste of forest resources, affirming that these logs were felled as PUP arrangement and cannot be traced and exported through COCS due to lack of identifiable and traceable mark.
- Receipted payment of $5,127.32 made for stumpage and export permit fees to the FDA/Revenue and Account No. 007USD21515209908 at LBDI against Invoice FDA no. 08/20/2018.
- Letter dated May 23, 2014 from the MOJ determining that logs were felled and stored illegally in District no.2 in Grand Bassa County and in the Port of Buchanan. The MOJ authorized the People of District no.2 to take possession of the logs and to dispose of them consistent with FDA regulations, and stated that for the others it would issue a directive.

The IA needed to register an **ISSUE (**ref. **HII 32** in the IA Progress DB) about the absence of a central register in FDA for all export permits:

ISSUE HII 32
Impact level: High
Identified ISSUE: Export permits are being issued by FDA outside LiberTrace, without consulting with SGS/LVD (vs. against their opinion as per HII 10), and (the main point is,) no register is being kept by FDA of all export permits that have been issued. A parallel system of Export permit issuance presents a high risk of fraudulent issuance of illegitimate permits
Recommendations: Ensure a central register is being kept in a single place and public by FDA for all export permits issued for any forest product (be it enrolled or not in the COCS), with incremental numbers. Any parallel system of Export permit issuance should be stopped with immediate effect.

'VPASec Updates' on the 7th JIC version of the Forward Planner (FP) (February 25, 2019), not yet taking account of eventual 7th JIC decisions:

Regarding **Principle 10** (EXPORT, PROCESSING AND TRADE REQUIREMENTS), **Indicator 10.1** (exporter duly registered with FDA annually): "LIC/GoL to require control of minimum requirement of export permits and documents uploaded on LiberTrace accordingly".

Regarding **Indicator 10.3** (Any load priced according to current market information): "LIC/GoL needs to require that all documents to be uploaded on LiberTrace".

Reminder of **developments between 6th and 7th JIC** as per the FP, highlighting past and current issues:

- Oct – Dec 2018 regarding **Indicator 10.1** (above): "According to FDA, all contract holders are in compliance with this indicator.
  According to IA, export license is being issued. The requirements that have to be met to allow for the issuance of an export license are contained in the document: "Verification of documentation before the issuance of Export Permit", dated November 2016.

Not all of the key requirements listed in this document are being met e.g.: under pre-felling requirements the following are all non compliant: e) Strategic forest management plan (SFMP); f) Five years forest management plan (5YFMP); g) Annual operation plan (AOP); h) Annual coupe demarcation*".*

- Oct – Dec 2018 regarding **Indicator 10.2** (all export shipments entered into the COCS): "According to FDA, all timber exported from Liberia are processed in the LiberTrace*".*

  Note: The IA has gathered evidence that Export Permits are issued by the FDA outside of the COCS and no central registry is being maintained of all EPs issued (See ISSUE HII 32, above).

- Oct – Dec 2018 regarding **Indicator 10.3** (above): "According to FDA FOB price is done based on International market value of each timber product (Copies are valid for 3 months) and reference prices are done by SGS.
  The IA assessed this as non-compliant on the basis that documents are not uploaded on LiberTrace".

Note: the above statements in the VPASec Updates regarding the IA do not truthfully reflect or fail to provide a clear reference to the exact IA's finding. See **ISSUE** raised about this (ref. **HII 35** in IA Progress DB) during Audit 4.

7.5.3.5 Review of the current issuance of Export permits during Audit 4

This new review can be found in the Volume 1 of this Audit 4 report, under 6.3.3.4.

7.5.3.6 Miscellaneous issues for future attention

This review can be found in the Volume 1 of this Audit 4 report, under 6.3.3.5.

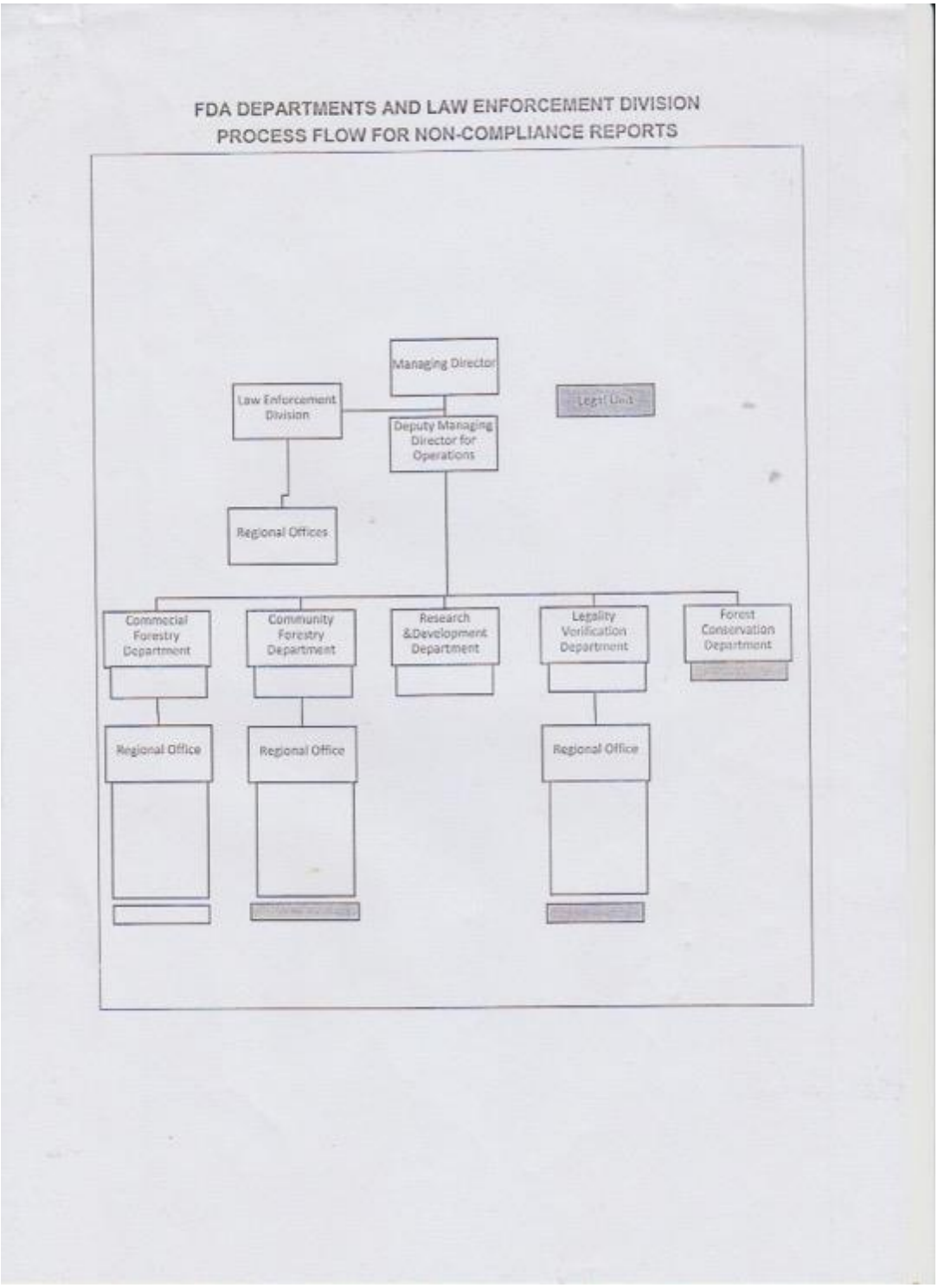
8 APPENDIX (ANNEXES)

8.1 Organogram of the FDA

See the organizational chart on the next page.

Structure of the Forestry Development Authority

8.2 FDA Departments and LED Process Flow for Non-Compliance Reports



8.3 Tables of content Manuals of Procedures for LVD staff and for operators – A comparison

Table 19: Tables of content of the two Manuals of Procedures, for LVD staff and for operators, compared

Manual of Procedures for Forestry Operators	Manual of Procedures for LVD staffs
DOCUMENT MANAGEMENT	**DOCUMENT MANAGEMENT**
INTRODUCTION	**INTRODUCTION**
1 OPERATOR REGISTRATION 1.1 STANDARD OPERATING PROCEDURE (SOP 04) 1.2 WORK INSTRUCTION: OPERATOR REGISTRATION	**1 OPERATOR REGISTRATION** 1.1 STANDARD OPERATING PROCEDURE (SOP 04) 1.2 WORK INSTRUCTION: OPERATOR REGISTRATION
	2 OPERATOR REGISTRATION VALIDATION 2.1 STANDARD OPERATING PROCEDURE 2.2 WORK INSTRUCTION: OPERATOR REGISTRATION VALIDATION
	3 REGULATORY REFERENCE DATA UPDATE 3.1 STANDARD OPERATING PROCEDURE (SOP 18) 3.2 WORK INSTRUCTION: REGULATORY REFERENCE DATA REGISTRATION
2 ANNUAL COUPE REGISTRATION 2.1 STANDARD OPERATING PROCEDURE (SOP 09&10) 2.2 WORK INSTRUCTION: ANNUAL COUPE REGISTRATION	**4 ANNUAL COUPE REGISTRATION** 4.1 STANDARD OPERATING PROCEDURE (SOP 09&10) 4.2 WORK INSTRUCTION: ANNUAL COUPE REGISTRATION
	5 ANNUAL COUPE VALIDATION 5.1 STANDARD OPERATING PROCEDURE 5.2 WORK INSTRUCTION: ANNUAL COUPE VALIDATION
3 BARCODE (TAG) REQUISITION 3.1 STANDARD OPERATING PROCEDURE (NEW) 3.2 WORK INSTRUCTION: BARCODE REQUISITION	**6 BARCODE (TAG) REQUISITION** 6.1 STANDARD OPERATING PROCEDURE (NEW) 6.2 WORK INSTRUCTION: BARCODE REQUISITION
	7 BARCODE (TAG) ISSUANCE 7.1 STANDARD OPERATING PROCEDURE (NEW) 7.2 WORK INSTRUCTION: BARCODE ISSUANCE
	8 BARCODE (TAG) MANAGEMENT 8.1 STANDARD OPERATING PROCEDURE (NEW)
4 INVENTORY OPERATIONS OR STOCK SURVEY REGISTRATION 4.1 STANDARD OPERATING PROCEDURE (SOP 07) 4.2 WORK INSTRUCTION: INVENTORY OPERATIONS	**9 INVENTORY OPERATIONS OR STOCK SURVEY REGISTRATION** 9.1 STANDARD OPERATING PROCEDURE (SOP 07) 9.2 WORK INSTRUCTION: INVENTORY OPERATIONS
	10 INVENTORY OR STOCK SURVEY VERIFICATION 10.1 STANDARD OPERATING PROCEDURE (SOP 08) 10.2 WORK INSTRUCTION: INVENTORY VERIFICATION
5 FELLING/ TREE DATA REGISTRATION 5.1 STANDARD OPERATING PROCEDURE (SOP 10&11) 5.2 WORK INSTRUCTION: FELLING REGISTRATION	**11 FELLING/ TREE DATA REGISTRATION** 11.1 STANDARD OPERATING PROCEDURE (SOP10&11) 11.2 WORK INSTRUCTION: FELLING REGISTRATION
	12 FELLING VERIFICATION/ STUMP INSPECTION 12.1 STANDARD OPERATING PROCEDURE

	12.2 WORK INSTRUCTION: POST-FELLING VERIFICATION/ STUMP INSPECTION
6 CROSS-CUTTING/ LOG DATA REGISTRATION 6.1 STANDARD OPERATING PROCEDURE (SOP 13) 6.2 WORK INSTRUCTION: CROSS CUTTING REGISTRATION	**13 CROSS-CUTTING/ LOG DATA REGISTRATION** 13.1 STANDARD OPERATING PROCEDURE (SOP 13) 13.2 WORK INSTRUCTION: CROSS CUTTING REGISTRATION
7 TRANSPORT DECLARATION 7.1 STANDARD OPERATING PROCEDURE (SOP 16) 7.2 WORK INSTRUCTION: TRANSPORT DECLARATION/ WAYBILL REGISTRATION	**14 TRANSPORT DECLARATION** 14.1 STANDARD OPERATING PROCEDURE (SOP 16) 14.2 WORK INSTRUCTION: TRANSPORT DECLARATION/ WAYBILL REGISTRATION
	15 TRANSPORT (CHECKPOINT) INSPECTION 15.1 STANDARD OPERATING PROCEDURE (SOP 17) 15.2 WORK INSTRUCTION: TRANSPORT (CHECKPOINT) INSPECTION
8 CHANGE OF OWNERSHIP DECLARATION 8.1 STANDARD OPERATING PROCEDURE (SOP 06A & SOP 32)	**16 CHANGE OF OWNERSHIP DECLARATION** 16.1 STANDARD OPERATING PROCEDURE (SOP 06A & SOP 32)
9 LOCAL SALES REGISTRATION 9.1 STANDARD OPERATING PROCEDURE (NEW)	**17 LOCAL SALES REGISTRATION** 17.1 STANDARD OPERATING PROCEDURE (NEW)
10 OTHER OUTFLOW DECLARATION 10.1 STANDARD OPERATING PROCEDURE (NEW)	**18 OTHER OUTFLOW DECLARATION** 18.1 STANDARD OPERATING PROCEDURE (NEW)
	19 TIMBER YARD INSPECTION 19.1 STANDARD OPERATING PROCEDURE (NEW) 19.2 WORK INSTRUCTION: TIMBER YARD INSPECTION –SAWNWOOD 19.3 WORK INSTRUCTION: TIMBER YARD INSPECTION - LOGS
11 SAWMILL PROCESSING REGISTRATION 11.1 STANDARD OPERATING PROCEDURE (SOP 15 & 30) 11.2 WORK INSTRUCTION: PROCESSING REGISTRATION	**20 SAWMILL PROCESSING REGISTRATION** 20.1 STANDARD OPERATING PROCEDURE (SOP 15 & 30) 20.2 WORK INSTRUCTION: PROCESSING REGISTRATION
13 EXPORT PERMIT REQUEST 13.1 STANDARD OPERATING PROCEDURE (SOP 19) 13.2 WORK INSTRUCTION: EXPORT PERMIT REQUEST	**22 EXPORT PERMIT REQUEST** 22.1 STANDARD OPERATING PROCEDURE (SOP 19) 22.2 WORK INSTRUCTION: EXPORT PERMIT REQUEST
	23 EXPORT PERMIT VERIFICATION 23.1 STANDARD OPERATING PROCEDURE (SOP 20) 23.2 WORK INSTRUCTION: EXPORT PERMIT VERIFICATION
	24 EXPORT PERMIT ISSUANCE 24.1 STANDARD OPERATING PROCEDURE (SOP 20 & 21) 24.2 WORK INSTRUCTION: EXPORT PERMIT ISSUANCE
	25 CERTIFICATE OF ORIGIN (COO) ISSUANCE 25.1 STANDARD OPERATING PROCEDURE (NEW)
	26 LOADING REGISTRATION AND INSPECTION 26.1 STANDARD OPERATING PROCEDURE (NEW) 26.2 WORK INSTRUCTION: LOADING REGISTRATION AND INSPECTION
14 LEGALITY DECLARATION 14.1 STANDARD OPERATING PROCEDURE (SOP NEW)	**27 LEGALITY DECLARATION** 27.1 STANDARD OPERATING PROCEDURE (NEW)
	28 LEGALITY REGISTRATION 28.1 STANDARD OPERATING PROCEDURE (NEW)

	29 LEGALITY VERIFICATION 29.1 STANDARD OPERATING PROCEDURE (NEW)
	30 LEGALITY AUDIT 30.1 STANDARD OPERATING PROCEDURE (NEW) 30.2 WORK INSTRUCTION: LEGALITY AUDIT
15 FEES MANAGEMENT 15.1 STANDARD OPERATING PROCEDURE (NEW)	**31 FEE PAYMENT** 31.1 STANDARD OPERATING PROCEDURE (NEW)
16 FEES PAYMENT 16.1 STANDARD OPERATING PROCEDURE (NEW) 16.2 WORK INSTRUCTIONS: FEES PAYMENT AND MANAGEMENT	**32 FEE MANAGEMENT** 32.1 STANDARD OPERATING PROCEDURE (NEW) 32.2 WORK INSTRUCTIONS: FEE PAYMENT AND MANAGEMENT
	33 NON COMPLIANT TIMBER SECURITIZATION 33.1 STANDARD OPERATING PROCEDURE (NEW) 33.2 WORK INSTRUCTION: NON COMPLIANT LOGS SECURITIZATION
	34 FLEGT LICENSE ISSUANCE, REPLACEMENT, EXTENSION & DUPLICATE 34.1 STANDARD OPERATING PROCEDURE (NEW) FLEGT LICENSE ISSUANCE 34.2 WORK INSTRUCTION: FLEGT LICENCE ISSUANCE 34.3 STANDARD OPERATING PROCEDURE (NEW) FLEGT LICENSE REPLACEMENT 34.4 STANDARD OPERATING PROCEDURE (NEW) FLEGT LICENSE EXTENSION 34.5 STANDARD OPERATING PROCEDURE (NEW) FLEGT LICENSE DUPLICATE
	35 FLEGT LICENSE INVALIDATION 35.1 STANDARD OPERATING PROCEDURE (NEW)

8.4 Review of the Manual of procedures for LVD staffs

This annex relates to 7.3.11.1.

INTRODUCTION
1 OPERATOR REGISTRATION
Non-Compliance: Operators are sometimes registered where all requirements are not being met – Recommendation: Needs full review on LiberTrace
1.1 STANDARD OPERATING PROCEDURE (SOP 04)
1.2 WORK INSTRUCTION: OPERATOR REGISTRATION
2 OPERATOR REGISTRATION VALIDATION
Finding: OK
2.1 STANDARD OPERATING PROCEDURE
2.2 WORK INSTRUCTION: OPERATOR REGISTRATION VALIDATION
3 REGULATORY REFERENCE DATA UPDATE
Finding: OK
3.1 STANDARD OPERATING PROCEDURE (SOP 18)
3.2 WORK INSTRUCTION: REGULATORY REFERENCE DATA REGISTRATION
4 ANNUAL COUPE REGISTRATION
Non-Compliance: SSF is not submitted based on compartment plan
4.1 STANDARD OPERATING PROCEDURE (SOP 09&10)
4.2 WORK INSTRUCTION: ANNUAL COUPE REGISTRATION
5 ANNUAL COUPE VALIDATION
Non-Compliance: 5-year compartment plan is not mentioned in the SOP and WI, as is the legal requirement
5.1 STANDARD OPERATING PROCEDURE
5.2 WORK INSTRUCTION: ANNUAL COUPE VALIDATION
6 BARCODE (TAG) REQUISITION
Non-Compliance: No Barcode system implemented in Liberia, although a barcode appears on the tag
6.1 STANDARD OPERATING PROCEDURE (NEW)
6.2 WORK INSTRUCTION: BARCODE REQUISITION
7 BARCODE (TAG) ISSUANCE
Non-Compliance: No Barcode system implemented in Liberia, although a barcode appears on the tag
7.1 STANDARD OPERATING PROCEDURE (NEW)
7.2 WORK INSTRUCTION: BARCODE ISSUANCE
8 BARCODE (TAG) MANAGEMENT
Non-Compliance: No Barcode system implemented in Liberia, although a barcode appears on the tag
8.1 STANDARD OPERATING PROCEDURE (NEW)
9 INVENTORY OPERATIONS OR STOCK SURVEY REGISTRATION
Non-Compliance: The SOP/WI needs to be clear that all blocks that are intended to be harvested in a particular year needs to be submitted before the commencement of the logging season. All blocks thus need to have been surveyed by the operator.
9.1 STANDARD OPERATING PROCEDURE (SOP 07)
9.2 WORK INSTRUCTION: INVENTORY OPERATIONS
10 INVENTORY OR STOCK SURVEY VERIFICATION
Finding: OK
10.1 STANDARD OPERATING PROCEDURE (SOP 08)
10.2 WORK INSTRUCTION: INVENTORY VERIFICATION
11 FELLING/ TREE DATA REGISTRATION
Non-Compliance: The 30-day registration requirement is not being enforced in the system
11.1 STANDARD OPERATING PROCEDURE (SOP 10&11)
11.2 WORK INSTRUCTION: FELLING REGISTRATION
12 FELLING VERIFICATION/ STUMP INSPECTION

Non-Compliance: The block sampling is not objective and implemented. See 12.2.2.2 under the work instruction. E.G in the case of Amahood there has been no declaration of stumps and felling since December and the time of this audit.
12.1 STANDARD OPERATING PROCEDURE
12.2 WORK INSTRUCTION: POST-FELLING VERIFICATION/ STUMP INSPECTION
13 CROSS-CUTTING/ LOG DATA REGISTRATION
Finding: OK
13.1 STANDARD OPERATING PROCEDURE (SOP 13)
13.2 WORK INSTRUCTION: CROSS CUTTING REGISTRATION
14 TRANSPORT DECLARATION
Finding: OK
14.1 STANDARD OPERATING PROCEDURE (SOP 16)
14.2 WORK INSTRUCTION: TRANSPORT DECLARATION/WAYBILL REGISTRATION
15 TRANSPORT (CHECKPOINT) INSPECTION
Non-Compliance: This SOP/WI is not yet implemented
15.1 STANDARD OPERATING PROCEDURE (SOP 17)
15.2 WORK INSTRUCTION: TRANSPORT (CHECKPOINT) INSPECTION
16 CHANGE OF OWNERSHIP DECLARATION
Finding: Was not checked during this audit
16.1 STANDARD OPERATING PROCEDURE (SOP 06A & SOP 32)
17 LOCAL SALES REGISTRATION
Non-Compliance: This SOP/WI is not yet implemented
17.1 STANDARD OPERATING PROCEDURE (NEW)
18 OTHER OUTFLOW DECLARATION
Non-Compliance: This SOP/WI is not yet implemented
18.1 STANDARD OPERATING PROCEDURE (NEW)
19 TIMBER YARD INSPECTION
Non-Compliance: This SOP/WI is not yet implemented
19.1 STANDARD OPERATING PROCEDURE (NEW)
19.2 WORK INSTRUCTION: TIMBER YARD INSPECTION -SAWNWOOD
19.3 WORK INSTRUCTION: TIMBER YARD INSPECTION - LOGS
20 SAWMILL PROCESSING REGISTRATION
Non-Compliance: This SOP/WI is not yet implemented
20.1 STANDARD OPERATING PROCEDURE (SOP 15 & 30)
20.2 WORK INSTRUCTION: PROCESSING REGISTRATION
21: No paragraph 21 exists in the procedure
22 EXPORT PERMIT REQUEST
Non-Compliance: Does not meet the requirements as stipulated in the document named “current regime” See the remainder of the Audit 2 report for full details in this regard.
22.1 STANDARD OPERATING PROCEDURE (SOP 19)
22.2 WORK INSTRUCTION: EXPORT PERMIT REQUEST
23 EXPORT PERMIT VERIFICATION
Non-Compliance: Does not meet the requirements as stipulated in the document named “current regime” See the remainder of the Audit 2 report for full details in this regard.
23.1 STANDARD OPERATING PROCEDURE (SOP 20)
23.2 WORK INSTRUCTION: EXPORT PERMIT VERIFICATION
24 EXPORT PERMIT ISSUANCE
Non-Compliance: Does not meet the requirements as stipulated in the document named “current regime” See the remainder of the Audit 2 report for full details in this regard.
24.1 STANDARD OPERATING PROCEDURE (SOP 20 & 21)
24.2 WORK INSTRUCTION: EXPORT PERMIT ISSUANCE
25 CERTIFICATE OF ORIGIN (COO) ISSUANCE
Finding: OK
25.1 STANDARD OPERATING PROCEDURE (NEW)
26 LOADING REGISTRATION AND INSPECTION

Finding: OK
26.1 STANDARD OPERATING PROCEDURE (NEW)
26.2 WORK INSTRUCTION: LOADING REGISTRATION AND INSPECTION
27 LEGALITY DECLARATION
Non-Compliance: This SOP/WI is not yet implemented
27.1 STANDARD OPERATING PROCEDURE (NEW)
28 LEGALITY REGISTRATION
Non-Compliance: This SOP/WI is not yet implemented
28.1 STANDARD OPERATING PROCEDURE (NEW)
29 LEGALITY VERIFICATION
Non-Compliance: This SOP/WI is not yet implemented
29.1 STANDARD OPERATING PROCEDURE (NEW)
30 LEGALITY AUDIT
Non-Compliance: This SOP/WI is not yet implemented
30.1 STANDARD OPERATING PROCEDURE (NEW)
30.2 WORK INSTRUCTION: LEGALITY AUDIT
31 FEE PAYMENT
Finding: Was not checked during this audit
31.1 STANDARD OPERATING PROCEDURE (NEW)
32 FEE MANAGEMENT
Finding: Was not checked during this audit
32.1 STANDARD OPERATING PROCEDURE (NEW)
32.2 WORK INSTRUCTIONS: FEE PAYMENT AND MANAGEMENT
33 NON COMPLIANT TIMBER SECURITIZATION
Non-Compliance: This SOP/WI is not yet implemented
33.1 STANDARD OPERATING PROCEDURE (NEW)
33.2 WORK INSTRUCTION: NON COMPLIANT LOGS SECURITIZATION
34 FLEGT LICENSE ISSUANCE, REPLACEMENT, EXTENSION & DUPLICATE
Non-Compliance: This SOP/WI is not yet implemented
34.1 STANDARD OPERATING PROCEDURE (NEW) FLEGT LICENSE ISSUANCE
34.2 WORK INSTRUCTION: FLEGT LICENCE ISSUANCE
34.3 STANDARD OPERATING PROCEDURE (NEW) FLEGT LICENSE REPLACEMENT
34.4 STANDARD OPERATING PROCEDURE (NEW) FLEGT LICENSE EXTENSION
34.5 STANDARD OPERATING PROCEDURE (NEW) FLEGT LICENSE DUPLICATE
35 FLEGT LICENSE INVALIDATION
Non-Compliance: This SOP/WI is not yet implemented
35.1 STANDARD OPERATING PROCEDURE (NEW)

8.5 Review of Government bodies, on LED

Law Enforcement Division (LED)/ Forest Law Enforcement Division (FLED)

Legality matrix requirements	
LM Clauses	**2** Forest allocation **2.6 FLED and R&D Dept.** In consultation with stakeholders and based on its socio-economic survey report, the FDA has prepared an integrated map showing the contract area and adjacent land areas such as other concessions, protected forest areas and private land 2.6.1 FDA map showing the subject concession area and indicates adjacent lands 2.6.2 FDA enforcement report (FDA Compliance Audit Report)
Other clauses	N/A
Procedures	No procedures available to ensure that the R&D Department prepares maps in a consistent and credible manner. in practice, ongoing inspections culminate in a monthly report that the Regional manager sends to the National Authorizing Officer in the Contract Administration Division of the Commercial Department in Monrovia. No procedures exist to guide FLED in conducting annual audits in a consistent and credible manner.
Design of Templates	No checklists exist for annual audits that must be conducted by FLED. No report template for annual audit report.
Comments and recommendations	Lack of procedures and templates as described above. **Recommendation:** Prepare procedures and templates to fill the gaps identified above. Clarify where the ownership of the annual audit of each operator lies (CFD vs. FLED vs. LVD vs. EPD) and prepare documentation to ensure that annual audit on each operator can be completed in a credible, consistent and transparent manner (see also the requirements stipulated in the NFRL of Liberia regarding the annual audit.
Relevance of the requirement in LM	Fully relevant, but it is not yet clear whether the allocation of the annual forestry audit of every operator in Liberia belongs
LM Clauses	**5** Environmental obligations **5.5 FDA EPD, CFD, FLED** The Contract or permit holder has in place procedures (i) to ensure compliance with rules regarding wildlife conservation, and (ii) to avoid harvest or trade in endangered or threatened plants and animal species 5.5.2 FDA Annual Compliance Audit Report
Other clauses	CFHP

Procedures	FLED: Procedures are partly captured in the document "Liberian Forest Sector Compliance and Enforcement Handbook (First Edition)" dated 31 August 2017, but not yet approved.
Design of Templates	No approved templates are available for the FLED officers to enforce requirements related to wildlife conservation, and to avoid harvest or trade in endangered or threatened plants and animal species
Comments and recommendations	A critical problem is about the precise role of FLED within FDA. Are they supposed to report to MD, as the FDA Organogram indeed indicates? What are their responsibilities *vis a vis* e.g. FDA CFD, CyFD, EPD, and LVD. Is FLED part of the reporting and enforcement chain? Are they supposed to act upon field inspection reports from other departments or to do their own separate inspections to collect primary information, which would suggest both a lack of coordination and duplication of efforts? FLED mandate is described in the Job Descriptions dated September 18, 2006. However these job descriptions need to be revisited once the exact role of FLED has been defined.
Relevance of the requirement in LM	Very relevant, but roles of each Department have to be properly clarified and then defined.
Capacity analysis	
Budget (Source: NATIONAL BUDGET, Fiscal Year 2018/2019 FOR THE PERIOD: JULY 1, 2018 TO JUNE 30, 2019 MFDP)	
2018/19 budget	No provision in the National budget for the fulfillment of the responsibilities of FLED
3-year budget forecast	No provision in the National budget for the fulfillment of the responsibilities of FLED
Conclusion on budget	No provision in the National budget for the fulfillment of the responsibilities of FLED
Staff	
Competency of staff	Most staff are not adequately trained due to new officers having joined the FLED team
Number of staff	19 staff in FLED of which 5 are in the central office.
Goods and services	
Vehicles	12 motorbikes for each of the 12 field staff. Division has one vehicle assigned to the head of the department. Bottleneck to get central office staff to get to the field.
Fuel	No fuel provided to field staff for motorbikes.
Tools & Equipment	PPE supplied, Also 6 GPS units, 16 cameras, 15 computers, uniforms
Field accommodation	No field accommodation provided
Stipends paid	Not paid
Capital Expenditure	
No provision for capital expenditure in the 2018/19 government budget.	

Performance level in conducting field inspections	
Schedule for inspections	No schedule of field inspections. Three inspections done in 2017 (two sponsored by FDA and one sponsored by REDD) and 3 inspections were done to date in 2018 – these 3 inspections were sponsored by REDD.
Compliance with schedule	No schedule
Correct use of templates	No report template
Completeness of reports	Reports are not sufficiently complete to cover the scope of the work of FLED
Issuance of penalties	No penalties are being effected and no registry being kept of any punitive measures taken against operators for non-compliances.
Payment penalties	See above
Closure of corrective actions	See above

Overall conclusion

The FLED is totally suppressed within the FDA from making any meaningful contribution to legality in the Liberian forest sector.

The main shortcomings are summarized as follows:

- Role within FDA not clearly defined, understood and implemented
- No clear definition of the roles and responsibilities of FLED vis-à-vis other government departments
- Draft procedures not yet signed off by BOD of FDA
- No approved templates available for implementation of responsibilities (whatever those may be)
- No official registry being kept by FLED of any punitive measures taken against operators in the forest industry
- No budget provision in the national budget
- All staff not trained to fulfill their role in terms of the Legality matrix
- No resources to allow staff to function effectively and efficiently – vehicles, accommodation, per diems, PPE, field instruments, computers.

Recommendations

- FDA BOD to sign off draft operating manual of FLED dated August 2017.
- Prepare procedures and templates to fill the gaps identified above.
- Clarify whether the ownership of the annual audit of each operator lies (FDA vs. FLED vs. LVD vs. Environmental Protection Agency) and prepare documentation to ensure that annual audit on each operator can be completed in a credible, consistent and transparent manner (see also the requirements stipulated in the NFRL of Liberia regarding the annual audit.
- Maintain registry of fines and other steps taken against operators.
- Prepare a bottom-up budget for FLED in terms of goods and services as well as Capex requirements to allow the department to fulfill its responsibilities in terms of law enforcement in a credible and transparent manner.

8.6 Compliance Audit Report on ICC/Forest Venture of FMC-K and LTTC/CFMA-4

Table of Contents of the report produced by the LED (September 17, 2018)

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Pages

8.7 PAD - Implementation of Annex IX

Implementation of Annex IX "Public information and Transparency measures"

LIST OF DOCUMENTS REQUIRED UNDER ANNEX IX	AVAILABLE ON FDA WEBSITE – March 2017 *(all documents shall be regularly updated and completed)*
INFORMATION TO BE ROUTINELY PUBLISHED	
Information relating to the VPA	
VPA and annexes	YES
Reports produced by the Joint Implementation Committee	YES
Reports produced by the Independent Auditor	Not yet applicable
Procedures guiding the functioning of the JIC	Not yet applicable
Aides-memoires and other reports by the JIC, including monitoring and impact studies	YES
Procedures and terms of reference of the national stakeholder committee for monitoring the VPA	NO
Guidelines for LAS compliance	NO
Guidelines for social agreements	NO
Information on management of the forestry sector	
Information on public agencies with oversight over the forestry sector	NO
Legislation, regulations and operating procedures referred to in Annex II	YES
Information on forest resource allocation	
Forest licenses issued, including TSC, FMC, agreements and permits for operations and processing (including FUP and PUP)	PENDING
Agricultural concession contract agreements (Annex 1)	NO
Documents relating to competitive bidding (pre-qualification evaluation panel report)	NO
Concession contracts awarded	NO *(to be clarified)*
Social agreements	YES
Map of communal forests	PENDING
List and maps of all TSC, PUP, FUP, FMC	PENDING
Information on forest resource production	
Volumes and monetary values of harvested forest resources	YES *(SGS monthly revenue report)*
Annual volume of timber imported into Liberia or transited through Liberia	Not yet applicable
Information on forest fees and revenues	
Schedule of forestry-related fees and taxes	YES *(SGS monthly revenue report)*
FOB prices	NO
Information on law enforcement in concession areas	
Penalties imposed and list of those who paid and those who are not compliant	NO
Annual volume of timber products sold at public auction and monetary value of the sales	NO

8.8 Detail of forestry licenses

Annex 7: Detail of forestry licenses

No.	Company	Physical Location	Operating Location	Type of License Contract	License / Permit Issue Date	License / Permit Expiry Date	Total Operation Hectare
1	Alpha Logging & Wood Processing InC. (FMC-A)	Rehab Junction, Robertsfield Highway	Lofa County	FMC	27/05/2009	26/05/2024	119,240
2	EJ & J Investment (FMC-B)	Clay & Carey Corner, Monrovia, Liberia	River Cess County	FMC	27/05/2009	26/05/2024	57,262
3	Liberia Tree & Trading Company (FMC-C)	Congo Town, Monrovia, Liberia	River Cess County	FMC	27/05/2009	26/05/2024	59,374
4	Euro Liberia Logging Inc. (FMC-F)	Congo Town, Monrovia, Liberia	River Gee & G. Gedeh Counties	FMC	30/09/2009	29/09/2024	254,583
5	Geblo Logging Company (FMC-I)	Providence Bldg, Ashmun St. Monrovia, Liberia	G. Gedeh & Sinoe Counties	FMC	30/09/2009	29/09/2024	131,466
6	International Consultant Capital (FMC-K)	Providence Bldg, Ashmun St. Monrovia, Liberia	Nimba, River Cess, G. Gedeh Counties	FMC	30/09/2009	29/09/2024	266,920
7	Atlantic Resources Limited (FMC-P)	Rehab Junction, Robertsfield Highway	G. Kru, Maryland, & River Gee Counties	FMC	30/09/2009	29/09/2024	119,344
8	Tarpeh Timber Corp. (TSC-A2)	Paynesville, Liberia	Grand Bassa County	TSC	27/06/2008	27/06/2011	5,000
9	Akewa Group of Companies (TSC-A3)	72nd Road, Paynesville, Liberia, Monrovia	Grand Bassa County	TSC	27/06/2008	27/06/2011	5,000
10	Bulgar & vincent Invest Corp. TSC-A6, TSC-A9, TSC-A10	Vincent Compound, Brewerville	Gbarpolu & Grand Cape Mt. Counties	TSC	27/06/2008	27/06/2011	15,000
11	bargor & Bargor TSC-A7	SKD Complex, Paynesville, Monrovia	Gbarpolu	TSC	27/06/2008	27/06/2011	5,000
12	Bassa Logging Company (TSC-A11)	Monrovia, Liberia	Grand Cape Mount County	TSC	21/07/2010	20/07/2013	5,000
13	Sun Yeun Logging Corp. (TSC-A15 & TSC-A16	Cong Town, Monrovia, Liberia	Grand Cape Mount County	TSC	21/07/2010	20/07/2013	10,000
14	Thunder Bird (TSC-A8)	Carey & Gurley Street	Cape Mount County	TSC	11/01/2010	30/09/2013	5,000
15	Ecowood Inc. CFMA-Bluyema	Bushrod Island, Monrovia, Liberia	Lofa County	CFMB	01/10/2012	01/09/2027	49,444
16	Liberia Hard Wood Corp	Cong Town, Monrovia, Liberia	NC	NC	NC	NC	NC
17	CFMB-Neezonnie	Neezonnie, Gbarzon District, G.Gedeh County	Grand Gedeh County	CFMB	16/08/2011	15/08/2026	42,424
18	CFMB-Blouquai	Bloquia, Gbarzon District, Grand Gedeh County	Grand Gedeh County	CFMB	16/08/2011	15/08/2026	43, 794

Source: EITI Reconciliation report for the year ended 30 June 2013 (6th_leiti_report_2012-2013.pdf, Dec. 2015)

Annex 7: Detail of forestry licenses [1]

No.	Company	Operating Location	Type of License Contract	License / Permit Issue Date	License / Permit Expiry Date	Total Operation Hectare
1	Alpha Logging & Wood Processing Inc.	Lofa County	Forest Management Contract Area - A (FMC-A)	27/05/2009	26/05/2024	119,240 Ha
2	Mandra Liberia/ EJ & J Investment	River Cess County	Forest Management Contract Area - B (FMC-B)	27/05/2009	26/05/2024	57,262 Ha
3	Mandra Liberia/ Liberia Tree & Trading Company	River Cess County	Forest Management Contract Area - C (FMC - C)	27/05/2009	26/05/2024	59,374 Ha
4	Euro Liberia Logging Inc.	River Cess & Grand Geded Counties	Forest Management Contract Area - F (FMC - F)	30/09/2009	29/09/2024	254,583 Ha
5	Geblo Logging Company	Grand Gedeh & Sinoe Counties	Forest Management Contract Area - I (FMC - I)	30/09/2009	29/09/2024	131,466 Ha
6	International Consultant Capital	Nimba, River Cess & Grand Gedeh Counties	Forest Management Contract Area - K (FMC - K)	NC	NC	NC
7	Atlantic Resources Limited	Grand Kru, Maryland & River Gee Counties	Forest Management Contract Area - P (FMC - P)	NC	NC	119,344 Ha
8	Sun Yeun Logging Corporation	Grand Cape Mount County	Timber Sales Contract Areas - A15 & A16	21/07/2010	20/07/2013	5,000 Ha

Source: EITI report for the year ended 30 June 2015 (leiti_2014-2015_eiti_final_report_18-08-2016-signed.pdf, July 2016)

8.9 Status of the Guidelines for Plantation Forests

Consultation in progress with the FDA and the IA Legal expert on the two main questions regarding the **Guidelines for Plantation Forests**: official approval and binding effect:

On 16.10.2018, the Manager/Forest Products Marketing & Revenue Forecast at the FDA, who reportedly helped to developed guidelines for plantations provided some clarity on the issue of plantation as per the VPA process: "*The 'Guidelines on Plantation Harvesting' cover all plantations that were awarded through the competitive bidding and must follow some kinds of chain of custody processes. This means that they are in the scope of VPA process. The Land rental and Stumpage-base Bid premium is being collected under VPA Processes and the shipment has to conform to the process. The exception is for exotic timber species that coming from scattered planted areas that have been felled or threatened by farmers [conversion timber]."*

In response, the IA TL requested further information as follows:

- Whether these 'Guidelines on Plantation Harvesting' are the same thing as the a.k.a. 'Timber from plantation' regulation mentioned in the VPA and thus have the status of a regulation that is binding on operators or other parties?
- What is therefore the current status of such regulation on 'Timber from plantation', if that is the case: has it been already developed and enforced following official approval?
- Shall I further assume that the exception to the above Guidelines for "exotic timber species from scattered planted areas that have been felled or threatened by farmers" falls under conversion timber, not plantation timber?
- And do you finally confirm that the "Guidelines for Timber from Agriculture and Mining Concessions", that were likely to cover "rubberwood and other timber products harvested under agricultural concession agreements" (i.e. as per VPA Annex II, 2.1e) have been cancelled by FDA given issues with "Conversion Timber" as per the VPASU update of March 2018? [See next regulation.]

In the meantime, the DMDO confirmed that the regulation on plantation forest (and another one on off-cut or residue) have been drafted, was presented to the Board, which reviewed it and made a few comments that are [still] being addressed. This, in the IA's view, confirms that the regulation (or guidelines) is indeed still a draft, not approved yet by the Board, therefore not yet in force and not in the IA's scope until further notice. The above questions must be addressed on the basis of the latest version available.

On 03.12.2018 the IA Legal expert provided the following advice:
"The November 25, 2016 so-called Plantation Guidelines are duly referred to as "Guidelines for Harvesting and Management of public and Private Plantation Forest Areas".
The guidelines are divided into the following sections:
1 Purpose
2. Scope
3. Standard Pre-qualification Requirements
4. Public Plantation Forest
5. Private Plantation Forest

6. Legality Assurance System
7. Bidding Process
8. Bidding Process
9. Timber stand Stock-Surveying
10. Preparation for Application, Pre-harvesting and Harvesting
11. Post Harvesting Activities

In terms of purpose, the document purports to “summarize mandatory requirements that will be applied to deliver appropriate environmental, social and economic outcomes in commercial timber harvesting of plantation forests.” Unfortunately, there are no mandatory requirements established in the document, except the statement that anyone seeking harvesting of timber in plantation areas must satisfy the pre-felling requirements established in the NFRL for TSC. It says that all public plantation forest contracts shall meet the minimum pre-qualification requirements in the NFRL (Sect.4.5) as applicable to TSC.

The document is neither signed by the MD of FDA nor is there any evidence that it was ever approved by the Board of FDA.

Overall, my conclusion is that the Guidelines are not duly approved, and have no binding effect. Even if they were duly approved, their content adds little to existing forest legislation and regulatory framework.”

On 04.12.2018 the IA TL requested more clarity from the Legal expert on the two main questions (official approval, binding effect):

1) The first thing is probably to seek confirmation whether the Guidelines have ever been approved by the Board of FDA, notwithstanding your finding that the document (in the version you reviewed) is not signed by the MD of FDA and your preliminary conclusion that the Guidelines are not duly approved.

The fact that it "looks" final and bears a date (November 25, 2016) may not make it an approved document. However a VPASU update (March 2018) mentions a 2017 version ("Guidelines for Plantation Forests: Drafted by FDA Legal; To be circulated for stakeholders input, national vetting; Produced by FDA on 2017"). The question must obviously be based on the latest version available.

In case it was approved, it clearly provides that "all products should be harvested through Special Chain of Custody System" under the LEGALITY ASSURANCE SYSTEM (with some exception for exotic species "threatened(?) by farmers"), which for me would mean that plantation timber is covered by the LAS and therefore would become part of the Independent Auditor's scope (which was the initial discussion).

2) In terms of ENFORCEMENT AND LIABILITY, and whether it has a binding effect, I find apparently contradictory statements:

- "The manual/guidelines *do not constitute a legal or statutory document*, but have been prepared to complement relevant... forest management standards, codes of practice and guidelines in respect to the planning, establishment, management and harvesting of forest resource in Liberia";
- " Forest plantation owners and potential contractors are *expected to comply with these terms of the manual/guidelines*...

The document, where it indeed purports to summarize applicable mandatory requirements, in that regard would add nothing to existing forest legislation and regulatory framework. However, I see it also proposes "*to regulate and monitor the commercial harvesting activities*"...

One may actually wonder whether it provides for an extension of existing forest legislation, that initially applied to a different scope (TSC), for application to plantations, and whether this actually creates new regulatory requirements for plantation timber.

A list of examples follows:

- It mentions pre-qualification requirements for anyone wishing to access and be involved in commercial timber harvesting of plantation forests in two places (under PURPOSE OF THE GUIDELINES, and STANDARD PRE-QUALIFICATION REQUIREMENT), with references to other different pieces of legislation:

  1) as per the Regulation 103–07 Regulation on Bidder qualifications requirements equivalent to Timber Sales Contract (TSC), and

  2) as established in NFRL 2006, Section 5.2 (a-i) for harvesting of TSC by the Authority.

- Likewise:

  - (under PUBLIC PLANTATION FORESTS) "All Public Plantation Forests Contracts should meet the requirements as mentioned in NFRL 2006, Section 4.5, a, b (i-vi), c, d, e, f, g, h, i, and j for Timber Sales Contract (TSC)";

  - (under PRIVATE PLANTATION FOREST) "All Private Plantation Forest intended for harvesting shall meet the requirements of Private Use Permit (PUP)" - no matter all all PUPs have now been cancelled...;

  - It sets out provisions for applying BIDDING PROCESS in accordance to the Public Procurement Act (Section 5.4a of NFRL);

  - It sets out SOCIAL–ECONOMIC SURVEY, and TIMBER STAND STOCK-SURVEYING (including taxation) requirements;

  - It does so also for POST HARVESTING ACTIVITIES, including with reference to requirements in NFRL 2006, Section 8.3 (c).

  It also seems to dictate a significant number of requirements under PREPARATION FOR APPLICATION, PRE-HARVESTING AND HARVESTING, with no or little reference to existing legislation.

8.10 Suggested changes to the auditing section of Libertrace

This annex was provided as Annex 7.14 (9 pages) in the Appendix to the Audit 3 report. It can be again provided upon request.

8.11 SD 01-01 Audit Checklist and report 2018.01.27

This annex was provided as a separate, standalone file annexed to the Audit 3 report (92 pages). It can be again provided upon request.

8.12 CFHP Checklist 2018.02.02

This annex was provided as a separate, standalone file annexed to the Audit 3 report (27 pages). It can be again provided upon request.

8.13 LVD audit of a CFMA (Jan. 2018)

SING AFRICA PLANTATION REPORT LVD

This annex was provided as Annex 7.18 (4 pages) in the Appendix to the Audit 3 report. It can be again provided upon request.

8.14 Checklist for the issuance of export permit: Bluyeama and Sawakajua

This annex relates to Chapter 7.5.3.1. It was provided as Annex 7.19 (11 pages) in the Appendix to the Audit 3 report. It can be again provided upon request.

8.15 Review of 2017/18 Annual Operation Plans (AOPs)

This annex was provided as Annex 7.20 (10 pages) in the Appendix to the Audit 3 report. It can be again provided upon request.

8.16 Legality of logging companies against “Current Regime

This annex was provided as Annex 7.21 (8 pages) in the Appendix to the Audit 3 report. It can be again provided upon request.

8.17 FDA imposing fine

This annex was provided as Annex 7.22 (8 pages) in the Appendix to the Audit 3 report. It can be again provided upon request.

8.18 FDA minimum diameter letter

REPUBLIC OF LIBERIA
FORESTRY DEVELOPMENT AUTHORITY (FDA)

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REF:MD/043/2017/-4

April 27, 2017

Mr. Frederic Teppe
Government and Institution
Forestry Project Manager
SGS/LiberFor, Inc.
Monrovia, Liberia

Dear Mr. Teppe:

The Management of the Forestry Development Authority (FDA) presents compliments and wishes to inform you about its decision surrounding the issues raised and discussed about the Diameter Cut Limits at breast height during the Technical Advisory Committee meeting of the forest sector on April 19, 2017.

As you are aware, provision of the FMC Contractual Agreement B6.22 stipulates that NO tree **smaller** than 60cm diameter at breast height should be cut. The Management of FDA therefore wishes to advise that logs already harvested at 60cm at Diameter Breast Height and above should be allowed passage and be processed for shipment.

Management advice is predicated on the fact that all Contractual Agreement were ratified by the Legislature and signed by the President of the Republic of Liberia, which means the FMC Agreements take pre-eminence over other regulations and codes.

Therefore, until this clause on Diameter Cut Limits can be amended, Management will implement what is written in the contract which is by law as compared to the Code of Forest Harvesting Practices.

In view of this, we anticipate your understanding and admonish you to act accordingly.

Best regards.

Sincerely yours,

Darlington S. Tuagben
Managing Director

CC: DMD/Adm. & Finance
DMD/Operations
TM/Commercial
NAO
COC
File

DST/JJT/WBP/mmd

8.19 Incorporating CFMA into the LM

This annex providing supplementary information relates to Chap. 6.1.1.10 in this volume.

Incorporating CFMA into the Legality Matrix (LM) of the VPA: 'Community Forestry Management Agreements and the Timber Legality Assurance System' (Extract from the **7th JIC** (Feb. 25 - March 1, 2019) Aide-memoire)

48. [FDA:] The key challenge with incorporating Community Forestry into the LM is that the current laws focus primarily on the steps in the award process. The draft "Compliance Procedures for the VPA Legality Matrix Verifiers" incorporates the existing legal requirements for community forestry but further work is needed to ensure it is comprehensive. [MoJ:] Even if the CFMAs are not included yet in the LM, commercial timber coming from CFMAs should still comply with the applicable laws.

49. This work will be implemented by the 'JIC Committee on the Inclusion of the CFMAs into the VPA's Legality Matrix'. The draft ToRs were presented by the EU. The JIC approved the ToRs and assigned individual members to the Committee. The JIC also agreed that the Committee will be dissolved once the intended objectives are achieved. The ToRs and list of members are attached to Annex 6* of this Aide Memoire).

* **ANNEX 6 - ToR for the Committee on Inclusion of CFMAs in the TLAS**

Background

Under the Community Rights Law (CRL) of 2009, communities are granted legal rights over the areas of forest resources they have traditionally used, once they have completed the relevant procedures[124]. Once all of the necessary requirements (8 first steps), the FDA and the community sign a Community Forest Management Agreement (CFMA). On this basis, the community can decide to sign an agreement with a third-party for the use of the authorized forest community´s forest resources, for commercial or conservation purposes.

> Noted by the IA: Through CFMAs, communities are increasingly establishing ownership of forests and selling logging rights to timber companies. Exports from CFMAs already match that from private concessions and the future expansion of commercial logging will mostly take place in community forests. (EU Liberia 2019-21 ToR AM DP, 1.4)

As of September 2018, 37 CFMAs have been approved, 101 CFMAs applications are pending or being processed for approval while only 5 CFMAs out of the 37 approved are producing timber for commercial purposes. Timbers coming from CFMAs for commercial purpose enter the chain of custody system (COCS) and go through certain legal requirements and controls. Timber coming from CFMAs now represents **15-20%** of Liberian timber exports; it is also used on the domestic market*.

> * Noted by the IA on the domestic market, for future attention[125]:
> The domestic market is still mainly informal. CFMAs have the potential to capture part of the previously informal market: "… according to some recent reports *most felling and commercial forestry is done informally, outside of the concessions, by chainsaw millers, for the domestic market. This is estimated at 3-4 times the scale of concession logging for export. In principle, this should be subject to the same traceability and legality requirements that are framed in national law and the VPA [Note: The latter subject to scheduling]. In practice, domestic timber and timber products are mostly unregulated and untaxed. It is estimated that half of the profits from chainsaw milling go to rural populations, around USD$ 15 to 20 million annually. Government collects*

[124] Under the Regulation to the Community Rights Law of 2009 and the nine-step process.
[125] See also 6.1.6.4, 6.1.9.12, 6.4.1.1, plus 6.1.7.3, 6.1.9.8, 7.3.1.8, and 7.3.3.2 in Vol.2)

only around 5% in fees."
(EU Liberia 2019-21 Terms of Reference AM DP, 1.4)

At the time of the VPA´s entry into force in 2013, the legal framework applicable to community forestry was not fully coherent yet and it had been anticipated that work will first need to be done around the promulgation of community forestry regulation to provide specific guidelines for community forest management. In February 2017, amendments to the Regulation to the Community Rights Law were approved.

Furthermore, the Liberia Land Rights Act was recently passed by the Liberian legislature and signed into law by the President. As this new law defines the different categories of land ownership and prescribed the means by which each of these categories may be acquired, used transferred and managed; it is likely it will have an impact on forest lands and the community forestry; whose regulations will need to be scrutinized so as to be coherent with this new piece of legislation.

At the 6th JIC meeting of June 2018, parties highlighted that "*As foreseen in the VPA, Liberia and the EU agreed during the JIC to engage more actively and formally on integrating timber sourced from commercially-oriented CFMAs, into the TLAS. This integration will require a revision of the current LM. The EU and Liberia agreed to move this process forward by forming a seven-member committee that will take the lead and report directly to the JIC on progress on this work. In order to support the collection of evidence that would better inform this process, the parties also agreed that this committee may engage in field monitoring on an ad hoc basis. In cases where field exercises are conducted, all members of the committee shall approve the results, reporting those results back to the JIC. The EU and Liberia will agree on the committee´s ToRs and scope of membership before the next JIC*.[126]"

Together with the FDA, the VPASU worked in 2018 on identifying ways to integrate the requirements of community forestry in the LM and developed draft 'compliance procedures on the process of CFMA allocation' and broader compliance elements[127].

Any revision of the LM will need to go through a formal process between the EU and Liberia [128] . However, the identification of the legality requirements and verification procedures applicable to the CFMAs can already serve as a useful basis for enhancing control and monitoring of current activities.

Objective

The objective of this committee is to lead the work on *"integrating timber sourced from commercially-oriented CFMAs, into the TLAS"* to ensure that timber coming from CFMAs goes through the same type of legality checks than other sources of timber. This is in accordance with the VPA, which applies to all timber exported from Liberia and endeavors to apply to the domestic market too.

The committee will be responsible for identifying relevant elements of the legal framework applicable to CFMAs, gathering inputs from all stakeholders and prepare suggestions for revision of the LM. Based on the existing state of government controls (chain of custody and legality verification) over timber coming from CFMAs, the committee will also prepare recommendations for increased compliance verification through the revision of the TLAS procedures.

The committee shall use as a basis for its work the existing material endorsed by, or presented to FDA and the GoL, including the "*Nine steps Handbook: checklist for*

[126] Aide-memoire of the 6th JIC meeting, paragraph 29
[127] VPASU, "Compliance procedures for the VPA legality matrix verifiers", version 2.2. Currently being reviewed by FDA management, before formal adoption by FDA Board.
[128] Note from the IA: This contradicts the IA's finding in 7.3.1.16, Vol.2 on VPA Art. 26,3.

establishing a forest community"[129] or the "*Compliance procedures for the VPA Legality Matrix Verifiers"*[130].

The outputs and recommendations of their work will feed into a subsequent broader multi-stakeholder process and bilateral negotiation over the formal modification of the VPA.

Tasks

- Based on existing reports on CFMAs and their legal compliance (application process, chain of custody compliance, FDA inspection reports, independent-forest monitoring reports), identify gaps and weaknesses around commercial timber sourced in CFMAs.
- Carry out field monitoring, on an *ad hoc* basis to collect evidence, increase understanding and better inform the inclusion of CFMAs into the TLAS. This could include at any time field observations on CFMAs operations; i.e. from the moment of application by the community to the point of CFMA allocation, and potential subsequent sub-contracting to a third party and commercial harvesting.
- Draw a comprehensive summary of the legal rules that apply to CFMAs (following the Legality Definition framework and its 10 Principles) and identify any potential gaps in the legal framework and opportunities for improvement.
- On the basis of the "Compliance procedures for the VPA LM Verifiers", other documents and Committee´s findings, identify possible amendments to the LD and /or the TLAS procedures.

  In addition to this, assess how the inclusion of CFMAs will require FDA to adapt/increase its operational capacities.
- Assess impact of the new Land Rights Act on CFMAs and in particular on CFMAs´ allocation and third-parties' agreements.
- Prepare and propose draft amendments to the Legality definition.
- Prepare and propose draft amendments to any other VPA annexes if relevant.

Composition

The seven-member committee shall be composed of:

- 2 representatives of FDA
- 1 representative of the LTA
- 1 representative of NGO Coalition
- 1 representative of NUCFMB
- 1 representative of the EU
- 1 representative of an international donor or project involved in CFMAs issues

When relevant, the committee can request the support of relevant external parties to inform their work, including other government agencies such as the Ministry of Justice or the Liberia Land Authority, members of the FDA Board, members of the NMSMC, other groups such as the Community Forestry Working Group, civil society, technical assistance projects or outside legal expertise.

Organization

(…)

Timeline and Reporting

(…)

[129] USAID, The "Nine Steps" Handbook, checklist for establishing a forest community
[130] VPASU, "Compliance procedures for the VPA legality matrix verifiers", version 2.2. Currently being reviewed by FDA management, before formal adoption by FDA Board

The JIC assigned the following members to this Committee:

1. Gray, Weedor – Forestry Development Authority (FDA)
2. Wallace, Robert – Forestry Development Authority (FDA)
3. Witherspoon, E. Ekema A. – Liberia Timber Association (LibTA)
4. Thompson, Saye – National Union of Community Forest Management Body (NUCFMB)
5. Lepol, Roland – International partners in Community Forest Management (LFSP)
6. Kennedy, Joseph – Non-governmental organization Coalition (NGO Coalition)
7. Palacios, David – (European Union)

Note: the two next paragraphs relate to: incorporating CFMA into the VPA´s LM; Public disclosure of information; FDA website

50. FDA indicated that good progress has been made in uploading CFMA allocation documents to the FDA website, although the size of the scanned documents for just 16 communities contributed to the crash of the FDA website. FDA indicated that in the interim, community forest allocation documents can be accessed via the Liberia Forest Atlas website (https://lbr.forest-atlas.org) and is also available from FDA upon written request.

51. MOJ highlighted that the FDA should ensure that the publication of documents is consistent with the existing laws and FDA should outline most specific parameters for public disclosure of information. Ideally some CFMA allocation documents should be uploaded while others may need to be made available upon request.

Note: the two next paragraphs relate to the CFWG's mandate and performance re: CFMA approval and the allocation of forests for commercial use vs. conservation.

52. The FDA's Community Forestry Working Group (CFWG) outlined its mandate and indicated that thus far the CFWG has reviewed 140 CFMA applications, and approved 122. Although the work plan of the CFWG has been developed, it has not been implemented due to low commitment from communities, limited funding, and limited input of member institutions on allocation documents.

53. The EU, SDI and FCI separately raised concern that the number of applications (122) approved by the CFWG seems to be very large considering 1) Liberia's legal requirements around the allocation of forests for commercial use 2) the current reviewing capacity of the CFWG and 3) the current capacity of the communities themselves to manage a commercial community forest. MOJ also highlighted that the role of the CFWG in approvals seems to be very early on in the application process, where their decisions are made without a lot of substantial information from the nine steps. The FDA indicated they are already looking at the balance of commercial community forest versus the amount of hectares legally available for commercial use. The type of uses for CFMAs are added into the total of each forest usage (Commercial, Conservation). This way FDA can ensure they strike a balance on the acceptance of commercial use CFMA application and other uses. The FDA stated that along with community forestry, there are currently 1.1 million hectares out of 2.5 million hectares assigned for commercial forestry and there are 411,000 hectares assigned as conservation forestry. FDA is making efforts to increase conservation forestry to achieve 1.5 million hectares as required by law.

The following relevant paper was presented at the **7th JIC** meeting as part of the **DAY 2 -** TECHNICAL SESSION on CFMAs and the LAS:

Update on the work of the CFWG; Progress and Challenges on the CFWG advisory role in CFMA Allocation

Background

- The CFWG was established by the FDA in 2007 to facilitate input from communities and other key stakeholders in the development and eventual implementation of laws and policies relevant to community forestry, including the NFRL, the CRL, and regulations

guiding their implementation. (e.g. In 2010, the CFWG with support from USAID funded LRCFP coordinated with FDA for the validation of the CRL Regulation across Liberia)

- Membership: 20 member institutions, plus 4 affiliate/partner institutions
- The Group's ToR was adopted in April 2017; it is the CFWG's guiding principle
- The group's leadership structure comprises a chairperson, a secretary, a treasurer, a representative of CFMA communities and a representative of the EPA

Role of the CFWG

- The CFWG facilitates community and stakeholder engagement, assists in the implementation of the community forestry program, and helps to build stronger ties between the FDA and forest communities (e.g. Since 2011, the CFWG has been working with forest dependent communities, helping them to review and understand the terms of condition of CFMAs before signing them; facilitated sessions with forest resource governance groups to develop their bylaws and constitution, followed up with FDA and ensured that election of CF leadership is transparent, etc.).

Progress up to date

- Supported and facilitated the screening of approximately 140 CF applications;
- Recommended to the FDA to approve about 122 of these CF applications; and to either reject, and or ask applicant communities to modify and resubmit others;
- With USAID PROSPER support, facilitated a massive awareness campaign in 2015 to increase community understanding of the CF application process;
- Reviews and validates the CFMA process with FDA – FDA provides documents of all of the steps;
- Lately, communicated with the management of FDA availing itself to support investigations into complaints coming from CF Communities;
- Developed a comprehensive work plan in 2017 to guide the conduct of CF activities. Currently seeking funding for the implementation of the work plan;
- In October 2018, organized a stock-taking retreat with over 54 participants, designed to improve the Group's mandates and to ensure the effective and efficient implementation of its role;
- Representatives of the Group travel with FDA to CF communities to observe and report the conduct and implementation of each of the Nine-Steps.

Funding and other support

- Regular meetings, other sittings of the Group's assembly funded by the LFSP;
- LFSP provides monthly stipend to Secretariat's non-governmental members;
- USAID FIFIES provides transportation reimbursement for meeting participants;
- As part of the output of the stock-taking retreat, the CFWG has now established a bank account with the local bank UBA;
- Member institutions of the Group are now paying monthly dues of US$25;
- Funding from the VPA for four other stock-taking retreats is acknowledged.

Meetings

- CFWG meets on the last Thursday of every month, at FDA or recently at the VPA FLEGT Facilitation office;

- Meetings provide the platform for members of the organization to present issues affecting and related to the CF sector in general and give update on their intervention in the sector.

Challenges

- Limited and consistent source of funding. Group is unable to extend its activities beyond Monrovia as a result of this limitation;
- Work plan of the Group has not been implemented due to funding challenge;
- Forest dependent communities not yet taking advantage of the CFWG platform;
- Advise and recommendations of the Group are not binding on the FDA;
- Lack of funding to conduct outreach to communities that are confronted by CF implementation problems;
- Reliance on FDA to facilitate the participation of CFWG representatives in scoping processes in forest dependent communities could compromise objective reporting;
- Limited input to the key document from institution members or group on key CF documents.

Note: next paragraph relates to draft template for Commercial Use Contracts (CUC)

54. NUCFMB outlined the status of the draft template for Commercial Use Contracts (CUC). A CUC is a contract between an authorized community that is interested in putting its forest to medium scale commercial use by partnering with a third party. The draft contract was submitted to FDA in September 2018 and the second official submission was made to FDA in mid- February, with amendments. The FDA will review the updated draft in the coming weeks, and make additional amendments.

8.20 LV Current regime template

This document relates to Chap. 7.4.5 (Vol.2). Only the first two pages, out of eleven pages in the original 'LV CURRENT REGIME TEMPLATE.docx', are provided below.

Desk audit:

Legality Matrix Current regime.

Operator:	
Resource Area	
Date:	

Legality ("L") (current regime checklist)	Status	Finding	Comment
Principle 1 - Company Registration	Choose an item.		
Indicator 1.1 - Registration/Recognition Certificate	Choose an item.		
Verifier 1.1.1 - Business Registration Certificate	Choose an item.		
Verifier 1.1.2 - Articles of Incorporation	Choose an item.		
Verifier 1.1.3 - Certificate or Letter of Recognition	Choose an item.		
Indicator 1.2 Prohibited Persons	Choose an item.		
Verifier 1.2.3 - List of Shareholders and Beneficial Owners	Choose an item.		

Desk audit:

Legality Matrix Current regime.

Legality ("L") (current regime)	Status	Finding	Comment
Principle 2 - Forest Allocation	Choose an item.		
Indicator 2.1 - Communities Consulted	Choose an item.		
Verifier 2.1.1 - Socio-Economic Survey Report	Choose an item.		
Indicator 2.3 - Prequalification Certificate	Choose an item.		
Verifier 2.3.1 - Prequalification Committee Report	Choose an item.		
Verifier 2.3.2 - Pre-qualification Certificate	Choose an item.		
Verifier 2.3.5 - Business Registration Certificate	Choose an item.		.
Indicator 2.6 - Contract Area Map	Choose an item.		
Verifier 2.6.1 - FDA Concession Map	Choose an item.		
Indicator 2.8 - Performance Bond	Choose an item.		

8.21 Communication strategy for the JIC and the "JIC protocol for managing contentious issues

This document relates to Chap. 6.4.16 (Vol.2). It contains the ANNEX 5 (Approved "Communication strategy for the JIC" and "JIC protocol for managing contentious issues) that was attached to the 7th JIC Aide-memoire, as well as Copies of presentations and other supporting material, provided to the IA, including the 'Text of the Presenter's notes'.

Communication strategy for the JIC of the Liberia-EU VPA

1. Introduction

Liberia is one of 15 tropical timber producing and processing countries formally engaged in the Voluntary Partnership Agreement (VPA) process under the EU FLEGT Action Plan. Liberia concluded a VPA with the EU in 2011. Following the ratification of the VPA by both parties in 2013, they established the Joint Implementation Committee (JIC) to facilitate the implementation, monitoring and review of the VPA. While Liberia has made important progress, implementation remains slower than anticipated. To address this, a forward planning tool was developed in 2016 to outline key milestones until FLEGT licensing and allow for the identification of more detailed short-term priorities.

While Liberia is implementing the VPA and making verification systematic, the government identifies weaknesses and non-compliances that they are addressing through the process. It exposes the reputation of the Liberian forestry sector and risks affecting perceptions of Liberian timber on the market. Both parties thus recognise that it is important to have a common understanding of the communication responsibilities of the JIC and to communicate proactively and transparently — and, if possible, with one voice — with domestic and international stakeholders about both progress and setbacks.

2. Situational analysis

Over the coming year or two, we anticipate that several factors will draw attention to the EU FLEGT Action Plan and the efforts of VPA countries to combat illegal logging and improve forest governance. These factors include:

- The experience of FLEGT-licensed timber from Indonesia arriving in the EU.
- Ghana likely being the second country overall and the first country in Africa to issue FLEGT licences in the near future.
- The possible ratification of several additional VPAs (two countries concluded negotiations in 2018).
- More scrutiny and sanctions by EU Member States under the EU Timber Regulation.

With Ghana being the first African country to issue FLEGT licences, other African VPA countries, in particular Liberia, given its difficult historical background and its related timber industry, will likely receive increased attention from stakeholders and the media. With increased attention come opportunities and risks.

This situation presents an opportunity to tell the story of the Liberia VPA and progress achieved at every milestone. When presented in an accurate and balanced way, the profound governance changes triggered by the VPA process – in Liberia and in other VPA countries – have the potential to resonate with buyers in the EU and other regions who seek to minimise business risks. This is particularly important for countries that are working towards issuing FLEGT-

licensed timber, but whose Timber Legality Assurance Systems are not yet fully operational.

However, during implementation, VPA countries are also more exposed to criticism, as the governance challenges addressed through the VPA process cannot be tackled overnight. Identified gaps and weaknesses can easily be perceived as lack of progress. The VPA also increases transparency significantly. While this is a positive development, increased transparency can contribute to exposing problems, which need to be balanced with communication on progress made.

Therefore, both progress and setbacks need to be communicated in a coherent and transparent manner.

Some examples of recent commentary that illustrate how increased attention and more availability of information on Liberia and on the VPA can lead to more criticism from stakeholders:

- Global Witness' February 2017 report "Holding the Line"
- The related online petition by Rettet den Regenwald "Keep Liberia's illegal timber out of the EU!"
- Question from EU civil society on alleged illegalities of Liberian timber

3. Purpose and scope

The purpose of this communication strategy is to guide communication by the JIC. With this strategy, the JIC aims to:

- Define the external communication responsibilities that are essential to fulfilling the JIC's mandate according to the VPA
- Define the approach, principles, activities and tools to support the JIC as it fulfils its responsibilities.
- Define the internal communication approach that is essential to fulfilling the JIC's responsibilities.

The parties to the VPA conceive this strategy as a 'living document' to guide communication by the JIC and as a tool that can be reviewed and revised as needed throughout the duration of the VPA. The strategy's focus is on the communication responsibilities of the JIC. It does not address Liberia's and the EU's own communication responsibilities under the VPA and those of other stakeholders, but will reflect on these responsibilities in annex 2.

4. Audiences/stakeholders

This strategy focuses on reaching and engaging with audiences/stakeholders who have an interest in the decisions of the JIC and the progress and impact of the VPA, but go beyond the actors already involved in the VPA process. These could include stakeholders from Liberia, the EU, as well as at a regional and international level from all stakeholder groups (government, private sector, civil society, communities, and so on). There is a comprehensive list of stakeholders in annex 1 that shows how the JIC audiences can go beyond the stakeholders that are actively involved in the JIC. Future associated communication plans should be more specific about what communication tools and channels will be used for which target audience.

5. The JIC's communication responsibilities

The JIC is co-chaired by the EU Ambassador and the chair of the board of the Forestry Development Authority (FDA). It is composed of 13 members. The

Liberian party is multi-stakeholder with several high-level representatives of the government, private sector, civil society and communities. A VPA Secretariat, supported by the Facilitator and the EU FLEGT Facility, contributes to the organisation and note taking of the JIC meeting. The JIC considers matters relating to the effective implementation of the VPA, and when empowered by the VPA, it adopts decisions and recommendations by mutual agreement and consent. The table below sets out some of the JIC functions described in the VPA, which relate directly to communication or may have associated communication activities.

1	Art. 19	The JIC shall ensure its work is transparent and that information of its work and decisions is made available to the public.
2	Art. 19	The JIC shall publish an annual report. Details of the content of this report are given in Annex IX of the VPA.
3	Art. 20	The representatives of the parties responsible for official communications concerning implementation of this Agreement shall be: For Liberia: The Minister of Agriculture[131] For the European Union: The Head if the Delegation of the Union in Liberia The parties shall communicate to each other in a timely manner the information necessary for implementing this Agreement.
4	Art. 21	The publication of information is essential to improve governance and therefore provision of information to stakeholders shall be central for this Agreement. Information shall be regularly published to facilitate implementation and monitoring of systems, increase transparency, and thus improve stakeholder and consumer confidence as well as to ensure greater accountability of the parties. Details of the information to be published are set out in Annex IX.
5	Art. 21	Each party shall determine the most appropriate mechanism for publishing information. In particular, the parties shall endeavour to provide stakeholders in the forest sector with reliable and up-to-date information.
6	Art. 21	The terms of reference and procedures guiding the functioning of the JIC shall be published.
7	Art. 22	Neither party shall disclose to the public nor permit its authorities to disclose trade secrets or confidential commercial information under this Agreement.
8	Art. 24	The parties seek to resolve any dispute concerning application or interpretation of this Agreement through early consultation

The communication responsibilities associated with the above functions can be grouped according the type of response they may require, as follows:

a. Announcing proceedings
b. Issuing routine reports
c. Managing stakeholder relations

[131] For Liberia, the Minister of Agriculture was the chair of the FDA board. Now the two functions are separated. Although the VPA mentions the Minister of Agriculture, in practice it might be the chair of the board of FDA as it is now the person co-chairing the JIC.

d. Capturing and sharing evidence of JIC activities and VPA implementation progress as well as outcomes of the Independent audits.
e. Managing communication responsibilities associated with disputes and other contentious issues under an established complaint mechanism.

A VPA Secretariat is responsible for following up, coordinating activities discussed in different meetings, and liaising with stakeholders. It is housed in the FDA and operational, but with limited staff and resources.
The JIC currently communicates using the following activities and tools:

- Issuing aide memoires of its meetings
- Issuing press releases when it takes major steps and/or decisions
- Releasing briefings, reports and other public documents at http://www.fda.gov.lr
- Releasing an annual report

Annex VIII of the VPA also describes possible supporting measures to implement the VPA, which outline in more detail how communication can support VPA implementation. Not all of these measures are the sole responsibility of the JIC. In addition to communicating as the JIC, the EU and Liberia will need to communicate as individual entities about the VPA with their audiences and stakeholders. In addition, there are other important communicators who can support JIC communication activities. These include the EU FLEGT Facility, the FAO-EU FLEGT Programme, civil society and private sector actors, such as the Liberian NGO coalition, the Liberia Timber Association, the Community Forest Development Committees, amongst others. See the annex in this document for more information.

6. The JIC's communication approach

Goals

- Maintain the JIC's reputation as a credible and transparent mechanism.
- Comply with the terms of the VPA with regard to JIC communication and transparency.
- Inform stakeholders nationally and internationally about progress on forest governance and towards the issuance and operation of FLEGT licences.
- Foster positive change and reforms through active VPA communication
- Demonstrate the impact of the VPA on forest governance and broader development goals to increase domestic and international support for the process.

Principles

- Enhancing accuracy and coherence of message by:
  - JIC communicating, to the extent possible, with 'one voice', proactively and transparently with stakeholders, donors and news media.
  - JIC members adopting a 'no surprises' approach, whereby they share what they are communicating about the VPA beforehand, and afterward share any resulting news stories and feedback that should be considered jointly by the parties.
  - Communicating directly with stakeholders, rather than through interlocutors such as the news media, to enable stakeholders and their representatives to cascade information to their constituencies.

- Demonstrating accountability through consistent and timely release of: decisions; annual reports; and reports of the independent auditor, impact monitoring, and the Independent Market Monitor.
- Managing communication responsibilities associated with disputes and other contentious issues.
- Building confidence in the JIC by avoiding messages that may establish unrealistic deadlines and expectations and stimulate public speculation about when Liberia will issue FLEGT licences.

Activities

a. Announcing proceedings

- Continue to issue aide memoire.
- Continue to issue press release for the public record after each JIC meeting and other important milestones, without promotion and without speculating about the future.
- Continue to distribute aide memoire and press release via the websites of the FDA, the EU Delegation, the EU, the EU FLEGT Facility, FLEGT.org and Capacity4dev.eu.
- Develop a VPA Facebook presence to distribute all communication materials.
- Issue regular 'friendly' email to all relevant stakeholders and/or their representatives, both nationally and internationally, informing them directly about proceedings.

b. Issuing routine reports

- Continue to release annual report via the above websites, but in a timely manner.
- Release summary of the report of the independent auditor and the JIC's response via the above websites and the friendly email system.

c. Managing JIC stakeholder relations

- Continue to invite and share agenda and related information and documentation about the meetings.
- Continue to share information on progress, via the above activities.

d. Announcing major decisions that have high news value, such as the decision to set a date for the commencement of FLEGT licensing

- When there are major decisions to announce that have high news value, such as the future decision to set a date for the commencement of FLEGT licensing, develop and implement communication plans.
- Depending on the nature of the announcement, the plans could include media briefings, media training and training to assist speakers with messaging and managing media interviews.
- Maintain an up-to-date briefing for news media that can be adapted for use when announcing major decisions, including a 'Questions and Answers' document.

e. Managing communication responsibilities associated with disputes and contentious media issues

- Develop and use a simple protocol for managing contentious media issues.
- Draw on the briefing for news media, which includes questions and answers for responding to media inquiries.
- Develop and rely on a communication protocol that provides guidance on acknowledging receipt of complaints, indicating response processes and

timelines (including referral to national complaint mechanisms), responding, recording feedback and archiving.

f. Capturing and sharing evidence of JIC activities, the VPA progress and lessons learned

- Regularly capture evidence of JIC activities and interactions with stakeholders (photos, documents, quotes and stories).
- Share evidence in annual reports, briefings, case studies, stories, videos and other communication tools on websites of the FDA, the EU Delegation, the EC, the EU FLEGT Facility, FLEGT.org and Capacity4dev.eu, and their social media channels, considering the supporting roles of other FLEGT actors (see annex).
- Profile Liberia's process and achievements in trade media in the EU and other markets.
- Use the milestones set by the JIC in the forward planner to identify appropriate opportunities to share these lessons learnt and achievements.
- Using this milestone-based approach, develop a communication plan to share the Liberia-EU VPA experience, updated regularly.
  This activity is not the sole responsibility of the JIC, but it should take an active role in contributing to these efforts.

Tools

	Tool	Status
1	Improved JIC web presence	Under development
2	Aide memoire template	To be discussed with the JIC?
3	Stakeholder mailing list	To be developed
4	Branded friendly email template	To be developed
4	Branded press release template	To be developed
5	Annual report template	Done
6	VPA Facebook presence	To be developed
7	Media briefing and Q + A	Briefing done and regularly updated (on EU FLEGT Facility website) Q&A to be developed
8	Protocol for managing contentious media issues	Under development
9	Protocol for managing JIC-level complaints	To be developed
10	Tools to capture and share evidence of JIC activities, the VPA progress and lessons learned	To be developed in cooperation with other stakeholders

Implementation The VPA Secretariat, located in the FDA, will coordinate the implementation of this strategy in collaboration with the communication officers in the EU Delegation and the FDA, and under the guidance of the two technical VPA focal points of the two parties. In the future, operational responsibility could lie with a communication working

group[132], with representatives of both parties. In the medium-term, the JIC and supporting FLEGT actors such a support projects, the EU FLEGT Facility and possible other partners, should have a conversation about what support maybe be needed to implement this strategy and the corresponding communication plans.
The EU FLEGT Facility stands ready to provide guidance and support in setting up most of the tools and drafting the communication plans, contentious media issues briefing, and many of the materials, with the aim to hand over this responsibility in the longer term. The EU FLEGT Facility can also help identify and mobilise support needed for implementation.

Monitoring and evaluation

The JIC will monitor and evaluate the implementation of this strategy, and review and revise the strategy as needed.

7. Internal JIC communication

The JIC's operating approach is very open and inclusive in the case of the Liberia-EU VPA. The Liberian party is not only represented by the government, it also includes many stakeholder representative from civil society, the private sector and forest communities. However, not all JIC members are able to attend every meeting and there is a lack of communication in between meetings. Therefore, setting up a process to improve internal JIC communication is as important as external communication.
In line with the principle and activities laid out in section 6, the JIC should agree to communicate proactively and transparently with its members, informing them on all relevant developments in a timely manner.

Activities:

Set up a process to:

- Inform all JIC members of all JIC and VPA-related developments and priorities, before other tools to inform the broader stakeholder community and the public are used.
- Develop, agree on and regularly update high level messages for JIC members to use when talking about the VPA in public
- Allow all JIC members to raise issues or share information with other JIC members, incl. what they are communicating about the VPA beforehand, and afterward share any resulting news stories and feedback that should be considered jointly by the parties (no-surprise approach)

Tools

	Tool	**Status**
1	Agreed process to follow for internal communication	To be developed
2	Internal JIC mailing list	To be developed
3	Restricted-access JIC web space for sharing information	To be developed

The VPA Secretariat should take the lead in establishing a process for internal communication. The EU FLEGT Facility can provide guidance and support in setting up the process and related tools.

[132] Article 19 of the VPA states that the JIC shall, if necessary, establish working groups or subsidiary bodies for areas requiring specific expertise.

Annex 1 of the Strategy: Audiences/stakeholders

Liberia

- High level decision-makers from the Government of Liberia, including officials and ministers from key Liberian ministries such as finance and economic planning, forestry, trade, industry, environment, foreign affairs, and labour
- Government agencies involved in the design and implementation of procurement, import or export policies
- Government agencies involved in the design and the implementation national development strategies
- Timber trade associations
- Owners and executives of the forest and timber industry and ancillary industries
- Liberia Forestry Development Authority employees
- Liberian civil society organisations with an interest in forest governance and associated issues
- Regional and local government representatives
- Forest dependent communities
- Informal loggers and actors of the informal market
- Traditional Authorities and landowners

EU

- EU senior officials, decision-makers and parliamentarians in Brussels
- EU Member States
- EU Delegation and Member States embassies in Liberia
- Current and potential buyers of Liberia's timber products in Europe and other markets
- Timber trade associations
- EU organisation and stakeholders involved in risk assessment and due diligence on Liberian timber products
- Monitoring organisations
- European civil society organisations with an interest in forest governance and associated issues

Regional

- Economic, trade, finance, customs, enforcement and development organisations
- Possible regional timber trade associations and their members
- Stakeholders from other countries in the region likely to import from or export to Liberia

International

- Timber markets beyond the EU, including Australia, China, Japan, the Middle East, South Korea and the United States
- Other VPA countries
- Donors and development partners who are active or could be active in assisting Liberia in forest governance
- Timber trade federation, association and unions
- Investors looking at forest related investment in Liberia

Annex 2 of the strategy: Reflection on ways the EU, the Liberian government and other stakeholders can support and complement the JIC's communication activities

Annex VIII of the VPA describes possible supporting measures to implement the VPA, which outline in more detail how communication can support VPA implementation:

"Communication supports implementation of the VPA and is essential to redress the negative image of the sector given the difficult historical background of Liberia and its timber industry. The VPA is an opportunity to work towards transparency, accountability and legality. The value of communicating about the government efforts to improve governance in the forest sector cannot be overemphasised. The VPA will affect not only the administration, but also different stakeholder groups and the broader public and therefore requires a comprehensive communication strategy that will provide all the necessary information on the VPA, its impact and its benefits, not only in economic, but also environmental and social terms. Communication on action planned and achievements under the VPA will aim to:
(a) encourage involvement and guarantee the coherence of actions by various stakeholders;
(b) ensure public access to information to facilitate monitoring;
(c) promote the image of Liberian timber on the international market;
(d) secure public support for the action taken by Liberia to promote sustainable forest resource management and development of the communities that depend on it; and
(e) promote the benefits of a VPA among the stakeholders and the wider public.

To this end, Liberia will support measures to ensure effective communication of the ambition and results of the VPA. Key measures may include:
(a) preparing and implementing a communication strategy with the goal of raising public awareness via modern and traditional media to keep the public and the timber trade informed about implementation of the VPA and its impact and benefits;
(b) identifying appropriate target groups and designing specific printed and electronic messages concerning the VPA for each target audiences with regular updates;
(c) establishing an information exchange platform for consistent dissemination of information to domestic and international partners, including considering where it should be located in the overall implementing structure;
(d) organising trade shows involving prospective trading partners to promote the benefits of FLEGT-licensed timber;
(e) putting systems in place for the appropriate government authorities to publish information and to respond to requests for information under the Freedom of Information Act, as indicated in Annex IX."

Some of these measures are covered by the JIC communication strategy, but not all of these measures are the sole responsibility of the JIC.
In addition to communicating as the JIC, the EU and Liberia will need to communicate as individual entities about the VPA with their audiences and stakeholders. There are also many other important communicators who can

support JIC communication activities. These include civil society and private sector actors, such as the Liberian NGO coalition, the Liberia Timber Association, the Community Forest Development Committees, and the EU FLEGT Facility and the FAO-EU FLEGT Programme, amongst others.

In particular, achieving the goal to demonstrate the impact of the VPA on forest governance and broader development goals to increase domestic and international support for the process cannot be the sole responsibility of the JIC. The communication plan proposed in the strategy should as much as possible include communication activities of other actors.

Developing a more comprehensive communication strategy as envisioned in the VPA annex could be desirable, but, given resources and capacity of the relevant actors, may not be realistic at the moment.

Below is a list of the different communication responsibilities of different actors. The list is not exhaustive.

EU:

- Communication to other EU bodies
- Communication within the EC (DEVCO C2 to other parts of DEVCO and relevant DGs)
- Communication to EU Member States and its relevant agencies (internationally and in Liberia)
- Communication to donors
- Communication to EU civil society
- Communication to EU private sector
- Communication to international partners

Chair of FDA Board/FDA:

- Communication to Liberia's political leadership
- Communication to other ministries
- Communication to Liberian parliamentarians
- Internal communication to FDA employees
- Communication to Liberian civil society
- Communication to the Liberian public
- Communication to donors

Other parts of the Liberian government:

- Communication to other ministries
- Communication the Liberian public
- Communication to donors
- Liberian NGO coalition and/or Community Forest Development Committees
- Communication to the public
- Communication to forest communities
- Communication to other civil society sectors in Liberia
- Communication to international CSOs
- Liberia Timber Association
- Communication to private sector in Liberia
- Communication to private sector outside of Liberia (the international market).

EU FLEGT Facility:

- Communication to the international FLEGT community

FAO-EU FLEGT Programme:

- Communication to the international FLEGT community
- Communication to its Members States

Liberia-EU VPA JIC protocol for managing contentious media issues

1. Introduction

This document describes a protocol for the JIC to manage contentious media issues in relation to the Liberia-EU VPA. This protocol does not intend to serve the parties in their independent management of contentious media issues that relate only to their individual interests.

The purpose of the protocol is to guide the JIC in:

- Coordinating responses to media requests for interviews or information regarding contentious media issues
- Evaluating the risks and opportunities associated with anticipated or actual media coverage and taking appropriate action
- Managing controversial, negative or inaccurate media coverage that could have implications for the reputation of either party
- Increasing the coherence and accuracy of media coverage

By **contentious media issues**, we mean **both anticipated or actual media coverage** that points to weaknesses in the VPA and/or is controversial, negative or inaccurate with regards to the forest sector in Liberia. Anticipated media coverage could be issues raised by stakeholders (in reports, online petitions, or open letters) that may or not make it into the news media, but require a decision on if or how to react.

Examples of contentious media issues that could be of concern to the JIC and might involve a collaborative response are:

- An international or national NGO plans to release a report saying that Liberia's TLAS is not stopping corruption or that illegal sources of timber are entering the TLAS.
- An international, regional or national journalist asks for information or an interview based on rumour of illegal imports entering Liberia's FLEGT-licensed trade
- The draft report of the independent auditor found evidence that communities were not receiving their fair share of compensation
- An Africa/Europe TV broadcaster shows a documentary that contains inaccurate information
- An EU commissioner receives a request for an interview from The Economist regarding sanctions under the EUTR against a European company that involves products from Liberia

These kinds of issues, if not well considered and managed, could influence the reputation of the parties, the JIC, the FLEGT VPA and the (future) FLEGT licence. A simple protocol is an effective tool for managing contentious media issues.

Section 2 describes the protocol, and Section 3 describes support for protocol implementation offered by the EU FLEGT Facility.

2. Protocol for managing contentious media issues

The parties to the VPA should follow the protocol below when:

a) The parties anticipate that there could be a contentious media issue that concerns the JIC

b) The parties identify a controversial, negative or inaccurate report or petition that concerns the JIC
c) There is a request from news media for information or interviews about a contentious media issue that concerns the JIC

Step	Action	Key actor(s)
1	Share the potential contentious media issue with the VPA focal points [133] and communication officers of the EU Del and FDA.	JIC members, EU FLEGT Facility or Facilitator
2	Notify the VPA focal points and communication officers of the EU Del and FDA when there is a request from news media for information or interviews about a contentious media issue.	Communication officers, EC, EU FLEGT Facility, JIC members or Facilitator
3	Determine whether more information is needed before decisions are made, and conduct research if needed.	EU Del and FDA communication officers
4	Jointly assess risks and opportunities and make recommendations.	EU Del and FDA communication officers
5	When action is or may be needed in the future, prepare and agree on a briefing document that may include messages.	EU Del and FDA communication officers
6	Notify those who need to know that there is a contentious media issue, such as EC, Minister and JIC members.	VPA focal points of the EU Del and FDA
7	Support recommended actions (if any), including development of plans for sensitive issues, messages and tools, if requested.	EU Del and FDA communication officers
8	Report on actions taken and results.	EU Del and FDA communication officers

There is a range of responses:

- Do nothing when a response is not warranted, as is often the case with inaccurate or negative media coverage.
- Notify the journalist or report or report author that there is an error.
- Take positive measures to provide accurate information for media about the issue.
- Demand a correction.
- Ask for the opportunity to provide another point of view through a follow-up story, letter to the editor (or author of the report) or OP-ED.
- Request support from the media outlet's editorial board or highest authority.
- Pursue legal action.

In most cases it is better not to respond to stories because doing so usually generates further coverage of a negative issue, 'giving a story legs'.

[133] To be discussed who the (non-communication staff) VPA focal points inside the EU Del and FDA should be

When a decision is taken to address critical comments from stakeholders (whether through the media or directly):

- Welcome the criticism as a contribution to the common goal to improve the VPA process.
- Remain polite and constructive when responding, even if the critical comments seem to be inaccurate.

It is only in extreme cases, such as persistent slander, that legal action is advised.

In most cases, it is best to provide information requested by news media and to agree to be interviewed.

The above actions can be taken jointly or individually, striving for coherence in message whenever possible to protect the credibility of the JIC. If the JIC cannot agree on a joint position to take, each party should keep the other party informed in advance of any action taken (in line with the JIC communication strategy).

3. Support from the EU FLEGT Facility for managing contentious media issues

The EU FLEGT Facility supports the EU and VPA countries with media relations. The Facility's communication team provides the following services:

- Monitoring news media (daily)
- Assessing news coverage (quarterly and in response to special initiatives)
- Developing content for the media (press releases, statements, backgrounders, Q&As, electronic press kits and more)
- Developing and implementing communication plans that involve media relations
- Providing training for speakers to engage with the media
- Training news media to cover FLEGT and VPAs

In addition to these ongoing activities, the communication team helps the EC and VPA countries to anticipate and manage contentious media issues. It provides this service within 24-hours of a request, and sometimes faster when a request is received to serve the EU's spokesperson, a Commissioner, a Minister or other senior official who must respond immediately to questions from the press. This service involves:

- Anticipating and identifying contentious media issues
- Researching issues, often with support from Facility experts
- Presenting options and recommending responses
- Writing key messages, statements, letters to editors and other materials
- Contacting media, organising interviews and offering content
- Monitoring and evaluating after the action

To request support, contact the Facility's focal point and these communication team members.

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Copies of presentations and other supporting material, provided to the IA:

- Talking points JIC.docx

  This is a copy of the presentation notes made by EFI on an 'Introduction to draft JIC Communication Strategy and Ongoing work' during the session on 'Transparency Requirements under the VPA and current Availability of Information'.

Text of the Presenter's notes:

Communication strategy for the JIC of the Liberia-EU VPA

- **Who am I and why am I here?**
  Jenny Bisping of EFI. I already met many of you to discuss what I'm going to present today. So I will not go through it in detail, but I'm happy to do so if there any specific questions.
  - 4th and 5th JIC meeting asked use expertise from EFI to develop a common Liberia-EU VPA communication strategy.
  - Fact-finding mission to Liberia in May 2017 talking with many stakeholders
  - Then developed draft com strategy for the JIC
- **Why now?**
  - FLEGT in the spotlight:
    - For example Indonesia, Ghana
  - With increased attention come opportunities and risks
  - **Opportunity:** Tell the story of Liberia VPA and progress achieved
  - **Risk:** Setbacks/delays can easily be perceived as lack of progress

  Therefore, both progress and setbacks need to be communicated in a coherent and transparent manner.
- **What can we learn from other VPA countries?**
  - Don't try to build something too complex, keep it simple: Focus on the JIC as a start (examples: Indonesia, Ghana)
- **Why the JIC?**
  - Coordinates implementation of the VPA and adopts decisions and recommendations by mutual agreement and consent.
  - Some JIC functions described in the VPA relate directly to communication or may have associated communication activities
- **Therefore purpose of the strategy is to** Guide communication by the JIC.
- **The JIC's communication approach (on slides)**
- **Goals**
  - Maintain the JIC's **reputation** as a credible and transparent mechanism.
  - Comply with the **terms of the VPA** with regard to JIC communication and transparency.
  - **Inform stakeholders** nationally and internationally about progress on forest governance and towards the issuance and operation of FLEGT licences.
  - **Foster positive change and reforms** through active VPA communication

- **Demonstrate the impact** of the VPA on forest governance and broader development goals to increase domestic and international support for the process.

- **Principles**
  - Enhancing accuracy and coherence of message by:
    - JIC communicating, to the extent possible, with '**one voice'**, proactively and transparently with stakeholders, donors and news media.
    - JIC members adopting a '**no surprises' approach**, whereby they share what they are communicating about the VPA beforehand, and afterward share any resulting news stories and feedback that should be considered jointly by the parties.
    - **Communicating directly with stakeholders**, rather than through interlocutors such as the news media, to enable stakeholders and their representatives to cascade information to their constituencies.
  - Demonstrating accountability through **consistent and timely release** of decisions and reports
  - Managing communication responsibilities associated with **disputes and other contentious issues.**
  - Building confidence in the JIC by **avoiding messages that may establish unrealistic deadlines and expectations** and stimulate public speculation about when Liberia will issue FLEGT licences.
- **Activities/tools: what's new?**

  I will not go into detail of all activities and tools, because much of it is happening already. I want to only highlight 5 things that are different or new:

  1. **Issue regular 'friendly' email to all relevant stakeholders** and/or their representatives, both nationally and internationally, informing them directly about proceedings.
  2. **Set up VPA Facebook page**
  3. **Decide how to manage communication responsibilities associated with disputes and contentious media issues:**
     a. Develop and use a simple protocol for managing contentiou media s issues.
     b. Develop and rely on a communication protocol that provides guidance on acknowledging receipt of complaints, indicating response processes and timelines (including referral to national complaint mechanisms), responding, recording feedback and archiving.
     c. Draw on the briefing for news media, which includes questions and answers for responding to media inquiries.
  4. **Develop communication plan**
     a. Share news, demonstrate progress and impact
     b. Use milestones to talk about the VPA
     c. Tell stories with a human face
     d. Outreach to media only when there are newsworthy achievements
  5. **Internal communication**
     a. Set up a process to improve internal JIC communication (not yet drafted)
- **Implementation in Liberia**
  - Coordinated through VPA Secretariat
  - In coordination with FDA Public Affairs and EU Delegation
  - Under the guidance of technical VPA focal points at EUD and FDA

  - With support from EFI
  - Communication working group?
- **EFI support**
  - Drafting friendly emails and press releases
  - Developing a communication plan (in consultation with VPA stakeholders)
  - Developing stories and social media material
  - Drafting briefings and messages for contentious media issues
  - Identifying and mobilizing support needed
- **Next steps**

  What needs to happen to have the JIC endorse this strategy?

8.22 Implementation of social agreements with communities – Supplementary information

This document relates to Chap. 6.5.2 (Vol.2). It contains relevant extracts from the 7th JIC Aide-memoire, as well as Copies of presentations and other supporting material provided to the IA, bringing more light regarding Benefit Sharing Progress and Payments (Principle 3), Transparency requirements under the VPA and current availability of information, and Tax collection and redistribution.

Benefit Sharing Progress and Payments (Principle 3)

Extract from the 7th JIC (Feb. 25 - March 1, 2019) Aide-memoire:

9. In response to the EU and Liberia's concern at the last JIC around the need for improved community project management and monitoring, the National Benefit Sharing Trust Board (NBSTB) provided an update on the recent audit of funds disbursed to communities. The NBSTB highlighted that an external firm has conducted an audit of the NBSTB's initial disbursement of USD 1 million, which was disbursed to respective Community Forestry Development Committees (CFDCs) between January 2016 and June 2017. The NBSTB highlighted that annual audits are a legal requirement, and that their official audit report will be released after FDA submits a letter to the audit firm, confirming that the disbursed amounts were indeed released from FDA to the NBSTB. FDA indicated that this confirmation letter has already been drafted and will be finalized and submitted to the NBSTB's audit firm within the next week. The NBSTB highlighted that the subsequent USD $1.622 million released to communities for projects in 2016/2017, will also be audited after this first audit is completed.

10. The National Union of CFDCs (NUCFDC) presented two sustainably managed projects in Lofa county (a Market Hall and a Clinic), which the JIC agreed to visit in late March. The EU will try to include this visit to some of these projects into the EU Head of Cooperation Section field mission to South East in late March. The NUCFDC highlighted that the Union is thankful for the disbursements from the Government of Liberia thus far. However, since 2017, the GOL has not disbursed the legally required 30% land rental fee to the NBSTB. FDA confirmed that despite their efforts to lobby for these funds, there is currently no allotment in the larger government's s 2018/19 budget to disburse funds to CFDCs via the NBSTB. The Ministry of Justice (MoJ) highlighted that although the disbursement of land rental fees is a legal requirement, the GOL currently has limited resources. MOJ highlighted that considering this, audit results should be made available as soon as possible, so that the larger Government understands how disbursed funds benefitted communities. This makes a strong case within the Government for future disbursements to be allocated for within the budget. The NMSMC decided to form a sub-committee, to hold cross government consultations however from all indication, this has not progressed under the NMSMC. The JIC agreed that more discussion is needed and that a mechanism needs to be established to take this matter further.

11. The NUCFDC highlighted that there are recognized capacity issues within some CFDCs that include: improper contracting, lack of financial capacity, insufficient analysis around project selection and limited project management skills. The NUCFDCs highlighted that despite these challenges, the capacity of the 23 CFDCs is being built gradually by various FLEGT support projects and CSOs.

12. The NBSTB also highlighted that the 5% allocated to the NBSTB for operations is not sufficient to monitor projects at the depth and frequency required. FDA expressed concerns that 5% of the disbursed amount was indeed quite enough for the NBSTB to conduct multiple monitoring exercises, and sees no reason why they cannot fully monitor. ... FDA also expressed gratitude for the projects executed so far and agreed that project selection is a clear challenge. FDA advised that the CFDCs should look at diversifying their governance bodies to make sure women, youth and other under-represented groups are well represented in the project selection processes.

13. The EU highlighted that Liberia's legal framework for sharing of benefits with logging affected communities is exemplary, and that the NUCFDCs, NBSTB, the Government and all stakeholders should work together towards effectively implementing this legal framework, so as to be an example of best practices for other countries.

56. The CFDCs shared their concerns on the fact that **payments to affected communities** were performed in both US and Liberian dollars. The exchanged rate for Liberian dollars received is significantly lower. This has had a direct impact on the actual monetary value of the transfer of funding to these communities. FDA acknowledged that had a similar issue with FDA staff payment, and commit to work with the CFDCs and the GOL to capture benefit-sharing payments in US dollars.

Relevant extracts from the JIC Aide-memoires bringing more light regarding:

Transparency requirements under the VPA and current availability of information

Extract from the 7th JIC (Feb. 25 - March 1, 2019) Aide-memoire:

42. The VPA Secretariat presented the transparency requirements in Annex IX of the VPA. The NUCFDC highlighted the specific information needs of communities. This includes data on the land rental fees collected and redistributed by central government, what has been redistributed by the NBSTB per area and per project, or on the cubic meter volume harvested, trucked and exported per company, per year and per area.

43. Both parties stressed the importance of transparency and availability of information within the forest sector. The FDA further committed to make disaggregated information available. The EU called all parties (FDA, NBSTB and others) for upgrading and maintaining transparency levels, as expressed in Principle 11 of the legality matrix and Annex IX of the VPA.

44. DFID suggested that in the interim period and until the FDA website is running again, the monthly Revenue and Market reports prepared by SGS/LVD be shared by email to the NMSMC members by the VPA Secretariat. The JIC agreed to DFID´s suggestion.

Copies of relevant presentations and other supporting material from the 7th JIC (Feb. 25 - March 1, 2019) provided to the IA:

- Cubic Meter Record for 2017 2018 Last Record.pdf

  IA's analysis: This contains, dated December 17, 2018, a 'Cubic Meter Harvest and Payment Record for 2017/2018' based on information monthly provided to the CFDC Field Monitor by the Alpha Logging Company and the FDA Staff working in the production area of FMC A - Lofa through the COC, of Volume

and Fees for Affected Communities (US$1.5 per m3), covering February-December 2017 and January- September 2018.

It may have been presented as part of the presentation on 'CFDC assessment on what is needed to make sure proposed projects are actually functional and benefit the community from the beginning; Tangible Actions to make this change' during the session on 'Benefit Sharing Progress and Payments (Principle 3)', both by Andrew Zeleman, NUCFDC Secretariat.

- Zelemen 2nd Presentation at 7th JIC.pptx

  IA's analysis: This may have been presented as part of the presentation on 'How CSOs and Communities use harvesting data; key challenges' during the session on 'Transparency Requirements under the VPA and current Availability of Information', by the NUCFDC Secretariat.

Extracts from the presentation:

Introduction

- PUBLIC INFORMATION AND TRANSPARENCY MEASURES (VPA Annex IX). Talks about information that should be published and provided upon request in line of FOI
- The Liberia National Forest Reform Law of 2006 also called for communication and transparency
- Providing communication to stakeholders involved in the VPA process will show how transparently things are done.
- In the VPA communication requirement there are information that must be made public to help the stakeholders understanding how the forest sector is performing.
- In this presentation we are briefly looking at some of the information that need to be communicated or made public to enable the CSOs, Communities and even the partners understand and make informed decisions.

Some Basic Data/Information Needed

- Data/Information on Land Rental Fees Collected, redistributed (amount for communities, counties and central government). This must be done company-by-company and areas
- Amount of money redistributed by the NCBSTB (CFDC area-by-area, project-by-project)
- Project completed or incomplete (CFDC area-by-area and year-by-year)
- Cubic Meter Volume harvested, trucked and exported (company –by-company, year-by-year and areas
- Cubic meter fees paid to communities (CFDC-by-CFDC, amount, year-by-year)
- Social Agreement Compliance (CFDC area-by-area)

Access to the information or who should make the information public and when?

- **Land Rental Fees information** – FDA/LRA/companies – on monthly/annual basis in newspaper or public websites or at the community level through the NUCFDC/NUCFMC/CSOs

- **Amount of money redistributed by the NCBSTB or paid directly to CFMBs** – NCBSTB/NUCFDC/NUCFMBs – on quarterly/annual basis to FDA/NMSMC/CSOs, on public websites
- **Projects completed/ incomplete** – NCBSTB/NUCFDC/NUCFMBs – on quarterly/annual basis to FDA/NMSMC/CSOs, on public websites
- **Cubic Meter Volume harvested, trucked and exported** – FDA/Companies – on monthly/annual basis to CFDC/NUCFDC/NUCFMB/CSOs, and on public websites
- **Cubic meter fees paid to communities** – companies/CFDC/NUCFDC – on quarterly/annual basis to FDA/CSOs, on public websites
- **Social Agreement compliance** – FDA LED/ NUCFDC/ CFDC/ NUCFMBs/ CFMBs/ CSOs – on quarterly/annual basis to communities/public

Some Examples

- Land Rental Fees paid to the Trust 2015-2017

  2015 === $1,000,000.00USD

  2016/17= $1,622,000.00USD (this was paid in both LD and USD, the USD was only $343,000.00; the rest was pay in LD at different rates
- Projects funded by NCBSTB, 2016-2018 = about 46 community projects with nearly $2,000,000.00USD
- Cubic meter harvested and fees paid only FMC A-Lofa is known (2017/2018)

  A. Total cubic meter volume harvested (2017/2018): 81,116

  B. Total Fees: $121,674; Amount paid: $80,000; |Amount unpaid: $41,674

Relevant information or comments from other sources regarding:

Tax collection and redistribution

Extracts from a press article: **Liberia's community forestry becoming a front for deforestation** (Mongabay, 23 January 2019)

The article relays a previous report released by Global Witness that alleges that Liberia's forestry laws are being "hijacked" by logging companies, putting vast areas of Liberia's remaining rainforests at risk of large-scale deforestation. This followed a 2016 Mongabay investigation that revealed how one community had entered into an illegal agreement with a logging company.

The Global Witness report warns that the private use permits (PUPs)' scandal of 2012 could repeat itself through Community Forestry Management Agreements (CFMAs). CFMAs allow forest communities to manage community forests, obtain permits, and enter into direct agreements with logging companies.

According to the report, timber companies are targeting community forests as a way to circumvent the current moratorium on large-scale logging concessions - which requires undertaking costly and laborious negotiations with the national government – to engage in lucrative commercial exploitation.

The report alleges that logging companies are secretly driving many of the 133 pending community forest applications, which would cover a total of 4.3 million hectares, or 45 percent of Liberia's total land mass.

Advocates blame the central government and FDA for not playing their role. They say communities lack the financial and technical support they need to navigate the application process and resist the temptations of dubious agreements with loggers, under pressure of powerful local elites or through the communities' elected management bodies abusing their power.

In his inaugural address, President Weah (…) stated that he inherited a "broken economy". This may explain why no land rental fees have been allocated to communities in the national budget. The omission is considerable: the National Forestry Law requires the Government to allocate 30% of land rental fees paid by logging companies to communities and another 30% to counties. However, from 2015 to the present, communities have received only a little more than USD 2 million through the NBST account. Liberians hope that the situation will be corrected before the next National Budget formulation. ('FLEGT VPA Update, December 2018 – Liberia', FERN)

Extracts from other media releases:

At the National Multi-Stakeholder Monitoring Committee (NMSMC) meeting in October 2018, Liberian civil society organizations (CSOs) exposed the transparency and compliance issues surrounding the Sewacajua and other CFMA processes. ('FLEGT VPA Update, December 2018 – Liberia', FERN)

Participants at the meeting remained committed to the multi-stakeholder VPA platform. There was hope however that the new MD of the FDA becomes more involved in VPA process undertakings, and that current delays do not diminish Liberia's VPA progress or delay setting up the new CFMA monitoring committee.

While the FDA is considered to be still lacking the ability to manage the CFMA process, leading to conflicts within communities, two CSOs are working with community forest leaders to build their capacity to manage community forests through Community Assemblies and Community Forestry Management Bodies.

Liberia expanded its national Extractive Industries Transparency Initiative (EITI) to include timber, but Liberia's EITI has since been suspended. ('FLEGT VPA Update, December 2018 – Liberia', FERN)

Relevant source for future attention: Global Witness report 'Liberia Power To The People (How companies are exploiting community forestry in Liberia) Oct. 2018.

"Successive *legal reforms in the forestry sector and nationally have translated the customary use of forests by communities into legally-recognized rights*. Currently, communities benefit from social agreements and fee payments that are a legal requirement on concessions. The government collects these fees and re-distributes to affected communities through a National Benefit Sharing Trust. *Approximately $1 million has been returned in this way, a small fraction of that owed to communities*. In law, 30% of land rental fees should go to communities, 30% to local government and 40% to government. In practice, central Government's take has been around 98% and it has been poor at collecting this form of fees; *currently companies have accumulated over $12million in tax arrears* [Which may be a confusion with Land Rental Bid Fees; logging companies are paying land rental arrears through a payment arrangement with LRA and FDA of

13% of FOB price for exported timber (See 6.2.6.3)]." (EU Liberia 2019-21 Terms of Reference AM DP, 15 January 2016, 1.4)